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MONTANA'S GREEN BELT LAW

A REPORT TO THE

FORTY-SEVENTH LEGISLATURE

REVENUE OVERSIGHT COMMITTEE

NOVEMBER 1980

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MONTANA LEGISLATIVE COUNCIL
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SUMMARY

HJR 42, passed during the Forty-Sixth Legislative Session, requested that an appropriate committee be assigned to study the operation of Montana's Green Belt Law. The study was subsequently assigned to the Revenue Oversight Committee.

The Revenue Oversight Committee held eight meetings during the 1979-1981 interim. The Green Belt study was one of many studies assigned to the Committee.

The reports that follow, including the bill draft, were the result of the Committee's study of the Green Belt law. In the final Committee meeting, a motion not to recommend to the Legislature the bill draft revising the Green Belt law passed unanimously -- with one abstention.

SUMMARY OF RECOMMENDATIONS

The Revenue Oversight Committee makes no recommendation.

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE COMMITTEE ON PRIORITIES TO ASSIGN TO AN INTERIM JOINT LEGISLATIVE SUBCOMMITTEE THE STUDY OF MONTANA'S GREENBELT LAW.

WHEREAS, the 1973 Legislature enacted Montana's Greenbelt Law, Title 15, chapter 7, part 2, for the purpose of classifying and assessing bona fide farm properties at a value exclusive of values attributed to urban influences or speculative purposes; and

WHEREAS, the Greenbelt Law as currently implemented has been largely ineffective in accomplishing these purposes and may, in fact, be contributing to the spread of urban sprawl; and

WHEREAS, recent legislatures, especially the 46th Legislature, have seen a proliferation of bills amending or repealing the Greenbelt Law in an attempt to improve its implementation; and

WHEREAS, none of these bills has been successful in accomplishing this purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is urged to assign an appropriate committee, consisting of equal representation of both houses and both parties, to study Montana's Greenbelt Law for the purpose of generally clarifying, updating, supplementing, and revising that law in order to insure that its original purpose will be accomplished. The committee shall report its findings and recommendations to the regular session of the 47th Legislature.

Approved April 18, 1979.

SUBJECT: MONTANA'S GREENBELT LAW
DATE: August 22, 1979
PREPARED FOR: Revenue Oversight Committee
PREPARED BY: Teresa Olcott Cohea Terry

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I. INTRODUCTION AND BRIEF SUMMARY

Sections 15-7-201 through 15-7-215, enacted by Chapter 512 of the Laws of 1973, is commonly referred to as Montana's "Greenbelt Law". This law provides that agricultural land be assessed for property tax purposes on its productive capacity as agricultural land, rather than on its market value for other purposes. It also imposes a tax penalty if agricultural land is changed to some other use.

Because the law has caused considerable controversy since its enactment and because serious questions about its effectiveness has been raised, the 1979 legislature passed HJR 42, calling for a study of Montana's greenbelt law "for the purpose of generally clarifying, updating, supplementing, and revising the law in order to insure that its original purpose will be accomplished."

This preliminary report seeks to provide a background for the study by discussing how agricultural land was assessed prior to the enactment of the greenbelt law, what the intent of the law was, how it has been implemented, and whether it has been effective. Future reports will analyze weaknesses and strengths of Montana's greenbelt law, discuss the effectiveness of similar laws in other states, and present alternatives to Montana's current provisions.

Briefly, this research report details the following points:

1. Montana's agricultural land has been assessed ever since the 1890's on its productive capacity; the 1973 enactment of preferential assessment in the "greenbelt law" merely codified these assessment practices.

2. The values used to establish the value of agrigricultural land have been changed little since the 1930's; there is no program to revise the values regularly to reflect current costs of production or commodity prices, i.e., current productivity measures.

3. Montana's greenbelt law, as drafted, is not sufficiently precise to allow easy implementation or to achieve the intent of its sponsors as reflected in legislative records.

4 The implementation of the act has been hampered by the ambiguities of its language: efforts to interpret the act have led to three Attorney General's opinions, numerous Department of Revenue memos, a major STAB decision, and a district court challenge.

5. Evidence suggests that the rollback tax is not being implemented or enforced in most counties.

6. Research to date raises questions about the effectiveness of the greenbelt law. These questions are explored on pages 24-29.

II. THE HISTORY OF ASSESSING MONTANA'S AGRICULTURAL LAND

A. Board of Equalization policies, 1891-1972

From 1891 to 1973, Montana statute required that agricultural land "must be assessed at its full cash value", which was defined as "the amount at which the property would be taken in payment of a just debt due from a solvent debtor." While data on the methods of assessment in the early days of statehood is scanty, records suggest that agricultural land was assessed from the beginning on its productive capacity.[1] This would, of course, have been the logical method of assessing such land: the "full cash value" of the land to the purchaser would have been its ability to produce crops or grass. When there was no pressure to use the land for such puposes as expanding cities or second homes, its productivity was the only measure of the land's value.

In 1919 - as part of its tax reforms and implementation of the new classified property tax system - the legislature required the commissioners of each county to provide for the classification of all land "for the purposes for which they may be valuable." Agricultural land was to be divided into tillable land, irrigated, nonirrigated, or grazing land. While commissioners used varying techniques and varying amounts of diligence in their classification, agricultural land was generally classified by topography. Tillable land was considered productive land level enough to plow and grazing land all other productive land. Nonirrigated tillable land was graded from No. 1 (100% land or highest productivity) to No. 5 (marginal land). In 1926, when the classification was virtually completed, the average statewide value of an acre was:

irrigated land	$50.80
nonirrigated land	12.86
grazing land	4.82 [2]

Unfortunately, the 1919-1926 classification coincided with the severe droughts of 1917-1921 and the disastrous drop in wheat prices during the 1920's. In 1928, the State Board of Equalization expressed great concern over the growing amount of agricultural land sold for the tax delinquency and urged the legislature to reduce the tax burden on it. Although the legislature did not formally direct the State Board of Equalization to lower land values, a consensus that some measures were necessary had clearly been reached. As Table I shows, the average assessed value of irrigated land dropped 32% in the decade 1926-1936 and grazing land 37%. In its report to the 27th legislature, the State Board of equalization stated that it had "centered its attention

on the equalization of assessed value in the major property classifications" and had decreased the assessed value of farm land and improvements $43,700,000. Now, the average statewide values per acre were:

irrigated land	$34.50
nonirrigated land	8.86
grazing land	3.02 [3]

The assessed values of most agricultural land have never been increased since the massive devaluation of the 1930's. As Table I illustrates, the average values of irrigated land slightly but were in 1978 almost identical to the averages of 1936. The average values for nonirrigated land have increased 56% during this period, due chiefly to the nearly doubled productivity of dryland wheat acres during the past 50 years.

While the techniques of assessment have grown more sophisticated with the advent of soil surveys, production records, and aerial maps and the various grades within each class have been more finely subdivided, the figures used in calculating costs of production and profits have changed little in decades.[4] The chief reason for these static values lies in the administrative history of the property tax system.

Assessors continued to use the assessed values for agricultural land set in the 1930's devaluation for the next twenty years even though the market value of land climbed steadily, as shown in Table II. However, in 1957, the legislature, recognizing that most property in the state was assessed at a fraction of its true worth, directed that all buildings be reappraised and all land--including agricultural land -- be reclassified. The Board of Equalization then issued procedures and instructions to all county assessors detailing the method of assessing and standard values for various grades of agricultural land.

These Board rules were important for two reasons. First, they were the first clear, public statement that agricultural land was to be assessed on its productive capacity. Second, the rules prompted a minor revolution in the counties. When the Board surveyed the counties to learn if reclassification was complete, it found that only 8 of the counties had used the Board's rules for valuing agricultural land. The rest had used procedures and values set by a committee of county assessors and commissioners or derived from other sources. These values were lower than those set by the Board, particularly for irrigated land. As Table I shows, the average assessed value of agricultural land in the state dropped as the counties entered their version of the values on assessment rolls.

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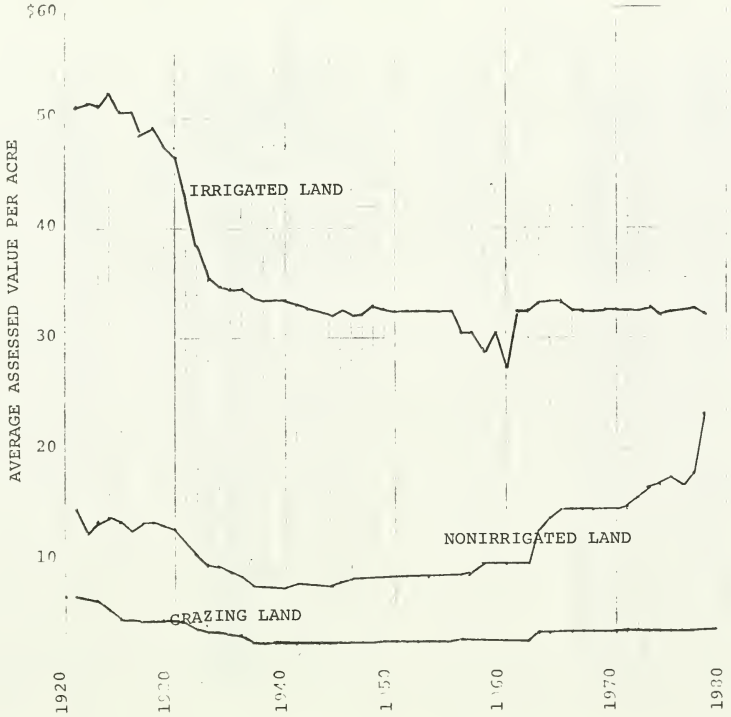
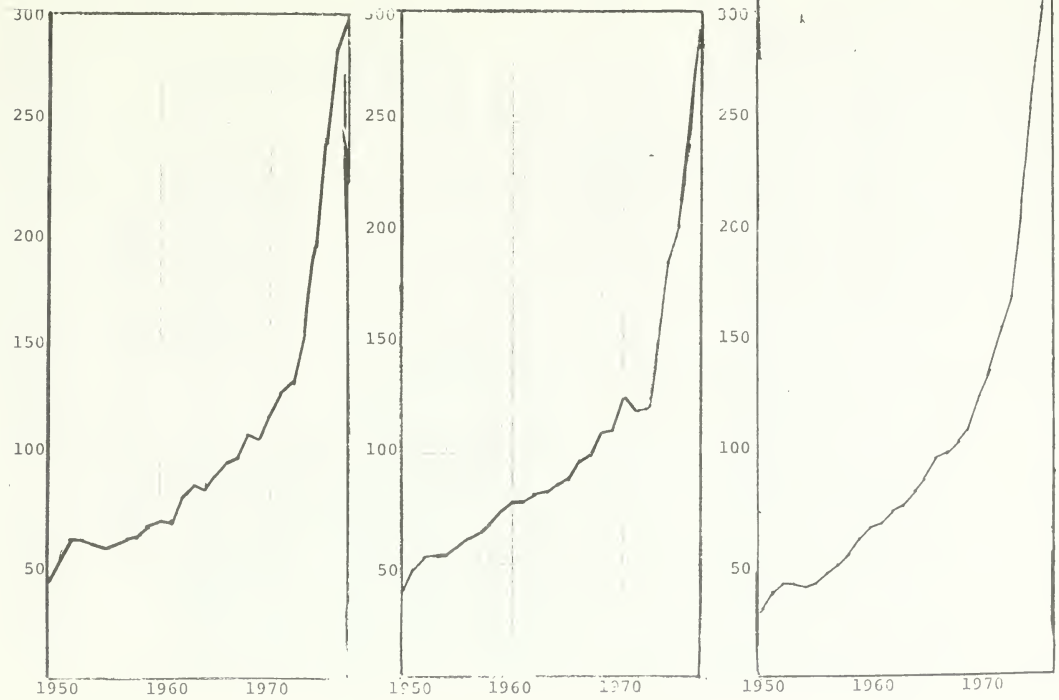
TABLE I
AVERAGE ASSESSED VALUE PER ACRE OF AGRICULTURAL LAND,1921-1977



SOURCE:BIENNIAL REPORTS OF BOARD
OF EQUALIZATION AND DEPT. OF REVENUE

TABLE II
FARM REAL ESTATE VALUES
Indexes of average value per acre
in Montana 1950-1977
(1967 = 100)



Irrigated Land | Dry Cropland | Grazing land

Source: USDA 1977

In 1963, the Board brought an original action in the Montana Supreme Court against the recalcitrant counties to force them to use the values contained in its rules. The Board lost the case because it had not, in the court's judgment, followed the proper hearings procedure in preparing and publishing the rule. However, the Court did not question the procedures and values set out in the rules. During the months following the decision, Board members met with commissioners and assessors who were using different values and a compromise set of values was agreed upon.[5] These values (except for a few amendments made in 1977) are those that appear today in the Administrative Rules of Montana and set the assessed value for agricultural land. These tables are contained in Appendix A.

While the participants who hammered out the "compromise" rules undoubtedly used formulas and logical progressions in preparing these tables, their rationale has not survived. Current Department of Revenue staff do not know what formula was used to correlate crop prices and production costs to arrive at each value.[6] This mystery makes evaluating the accuracy of the tables impossible and updating them very difficult. Department staff have firm guidelines for assigning agricultural land to specific grades within each classification of agricultural land, but they do not know how the value assigned to each grade was determined. Evidently, these values, however determined, were similar to the values used since the 1930's, since the average value statewide changed only pennies per acre.

When the Board of Equalization was abolished in 1973 and the Department of Revenue assigned its duties, the Department adopted the Board's rules governing the assessment of agricultural land verbatim. The only changes were made in 1977 when five new grades were added to the nonirrigated land tables, creating grades for production of over 35 bushels an acre.

During the recent reappraisal of agricultural land (required by Ch. 294 of 1975, which also mandated the reappraisal of buildings), the values in the tables were not changed. Rather, Department staff reclassified agricultural land in new grades, depending on its productivity.[7] The values for the grades were not changed. So, in most cases, the assessed values for agricultural land have not changed since the 1930's, while other property has been reappraised several times since then. This suggests that farm land is bearing a smaller share of the property tax burden than other types of property. A later research report will provide further analysis on this point.

Perhaps because most citizens find (with some justification!) the property tax assessment procedure obscure or perhaps

because the assessed values are so low compared to other property, the Department's rules have been challenged only on one point for being out-of-date.

C. Challenges to current assessment practices

The point on which the Department's tables have been challenged is water costs. As shown on page 10 of Appendix A, increased water costs decrease the assessed value of each grade of irrigated land. In 1976, two taxpayers in Treasure County complained to the county tax appeal board that their irrigated land was assessed at too high a value. Upon investigation, the Treasure County Tax Appeal Board decided that the water costs in the table were far less than actual high lift irrigation costs. They extended the table beyond the last column ("$7.50 & over") to include a higher cost column ($11 & above). The county board then lowered the taxpayers' assessments using this revised table. The Department appealed the decision, but STAB upheld the county board, saying that the rules had not been updated since 1957 and irrigation costs had increased sharply since then: "the tables are so outdated as to be inequitable". STAB advised the Department to revise its table to reflect current irrigation costs.[8] The Department did not change its tables and in 1977 ten taxpayers in the county appealed their assessments, on the same grounds, presenting evidence that their minimum irrigation costs were $12.35. The county tax appeal board lowered their assessments in each of the ten cases, again using the revised table. The Department appealed these decisions but STAB again upheld the county board. During the hearing, Department staff agreed that the water costs in the tables were incorrect and "have got to be reviewed and updated some time in the very near future." The Board again recommended that the tables be studied and revised for the 1978 tax year.[9]

The Department has not revised the tables. In Treasure County only, the assessor is using the expanded tables prepared by the tax appeal board. The Department has instructed all other assessors to continue using the published tables.

After the 1977 STAB ruling, DOR staff did review the tables. They concluded that, while water costs had risen, production had also risen, so that the resulting value shown in the tables was accurate. This staff review was, however, never published, so it is difficult to evaluate.[10]

III. ORIGINAL INTENT OF MONTANA'S GREENBELT LAW AS REFLECTED IN LEGISLATIVE RECORDS

The original intent of Montana's greenbelt law, as reflected in Standing Committee meeting minutes*, was to discourage urban sprawl and to allow full-time farmers a preferential assessment rate to enable them to continue farming. The roll-back tax was intended to penalize owners who took the land out of agricultural production and, thus, act as a disincentive. The committee debates on the "greenbelt bills" of the 1969, 1971, and 1973 sessions all centered on these concerns.

A. Greenbelt bills of the 1969, 1971, and 1973 sessions

In introducing SB 116** to the Senate Taxation Committee in 1969, sponsor Senator Lehrkind called it "The Greenbelt Bill" and stated its purpose was "to aid the farmer having property near an area where the surrounding lands have become valuable as a resort, such as land with lake frontage, causing the taxes to be raised considerably and often forcing the sale of the property."[11] The bill required that "land used for agricultural purposes shall be assessed according to its value for agricultural use without regard to the value it may have for other purposes", but did not contain a rollback provision. The bill, as introduced, was only two sections long and did not define agricultural land or require application for the preferential assessment.

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*This section is offered with two major qualifications. First, I recognize that Committee minutes and Journal entries are often inadequate reflectors of the real reasoning behind a bill or the actions that bring bills to enactment. Since, however, they are the sources most available to citizens, administrators, and courts who seek to discern legislative intent, I felt the above account might be of some value. Secondly, I am acutely aware that many legislators on the Committee were cosponsors of the bills, authors of the amendments and participants in the debates over the bill and are much more knowledgable about the legislative intent of these bills than I can ever be. This account is offered only to remind Committee members of the events surrounding the passage of the greenbelt law to facilitate their discussions.

**This bill was the only one I have been able to discover that was referred to as a "greenbelt" bill or which contained the concepts commonly labeled "greenbelt."

Senator Lehrkind said he was prompted to sponsor the bill by the State Board of Equalization's policy of reappraising agricultural land at the edge of cities as "suburban tracts" even though it was still being used for agriculture. The Board Chairman, who was present at the hearing, acknowledged that the Board did segregate agricultural land that "has acquired other uses" and value it higher. The Board opposed the bill because it would reduce the taxable value of land near cities and treat contiguous land differently.

The Board agreed, however, to support the bill when an amendment was added defining agricultural land as land "used for crop production or grazing and when the assessed value per tract is not less than $5,000". Board staff suggested that land with this value would represent an economic unit of agricultural land, not a random vacant lot held for speculation. The bill, with this amendment proposed by a subcommittee, was passed 5-3 out of Committee and 42-11 on the Senate floor.[12]

SB 116, initially, picked up added support in the House. Representatives of the Farm Bureau, county commissioners association, and Board of Equalization all spoke as proponents. Three senators came to its support, one noting the purpose of the bill was:

> to retain the desirable quality of the open spaces around our cities and also (to) protect the very limited first-class irrigation land we have.

The House Ways and Means Committee members unanimously supported the bill, after amending the $5,000 figure to $3,000.

However, on the next day, a Committee member asked that the bill be reconsidered. He said that the bill would cause trouble in some counties. Other members agreed and one added the bill "just protects people with large units and not the smaller acreages". The Committee defeated a motion to put the bill in a subcommittee for study and passed a motion to not concur. The House upheld this committee report and, thus, the greenbelt bill of 1969 died.[13]

HB 530, introduced in the 1971 legislature by Representative Gary Giesick of Billings, was a much more elaborate "greenbelt law". It defined agricultural land, established extensive criteria to make it eligible for preferential assessment, required owners to apply annually for this type of assessment, and imposed a two-year rollback tax. Its provisions were similar to rollback taxes legislation enacted within the past seven years in twelve other states.

In presenting the bill to the House Ways and Means Committee, the sponsor again emphasized that the bill's purpose was:

> to encourage full-time farmers not to sell their land in patches (but) to encourage them to develop in an orderly manner and to keep land in agricultural production.

Supporters said the rollback tax was an "essential element" of the bill and "would be of great value in stopping urban sprawl and encouraging farmers not to sell because of tax increases."[14]

Several opponents testified against the rollback tax. One farmer said that it would discriminate against farmers because appreciation in the value of other types of land was not subject to the tax. Board of Equalization staff also questioned the constitutionality of applying the rollback tax only to farmers. (Clearly, those at the hearing assumed the rollback tax would be applied to the seller of the land, not the buyer).

The House Committee amended the bill to require that at least $2,000 worth of crops must be produced on the land annually for it to qualify and to increase the rollback tax to four years. It then recommended it to the floor, where it passed 81-21.[15].

The Senate Taxation Committee was, however, not so enthusiastic. After hearing proponents and opponents, the Committee recommended "do not pass" without any recorded discussion. The 1971 "greenbelt law" was dead.[16]

In 1973, legislators were presented with two approaches: 1) SB 72 (Boylan) providing for assessment "without regard to the best and highest value use of adjacent or neighboring lands" of agricultural land "devoted to the production of horticulture, forestry, dairy, livestock, poultry, bee, and all farm production which produce at best $500 gross income within 20 acres."

2) HB 58 (Lockrem) containing all the same elements as the greenbelt bill of the previous session, with a four-year rollback and a $4,000 per year production requirement.

Initially, HB 58 made more progress through the legislature. Representatives of all the major farm organizations supported the bill before the House Taxation Committee and only one critic of the rollback tax testified. The Committee passed the bill after lowering the income requirement to qualify land as agricultural.[17] The bill had some difficulty on the floor, being amended on two consecutive days to:

1. allow tracts that produced less than $1,000 in crops a year or were under 5 acres to be assessed as agricultural land if they produced 15% of the owner's total gross income a year;

2. strike the eligibility requirement that the land had been assessed as agricultural for the past 5 years and had not changed ownership during that period;

3. provide a ten year rollback; and

4. state that the owner of record is not subject to the rollback tax if his land is taken by eminent domain.

As amended, the bill passed 79-9 on third reading.[18]

Meanwhile, SB 72 was meeting with little success. After hearing testimony and reviewing a staff research report on other states' programs for preferential assessment of agricultural land, the Committee tabled the bill for further study. Senator Boylan tried to get the bill out of committee when HB 58 was passed out of the House committee but the motion failed.[19]

When HB 58 was heard in the Senate Taxation Committee, the chairman appointed a subcommittee to consider it and SB 72. This subcommittee recommended, two days later, that HB 58 be tabled in the committee and SB 72 be passed, after striking everything after the enacting clause and inserting a purpose statement and the first two sections of HB 58. The committee unanimously approved the subcommittee's report.[20]

When the amended SB 72 went to the Senate floor, the subcommittee chairman made floor amendments to place the language of the remaining seven sections of HB 58 as amended in the House into SB 72. Thus, SB 72 was now identical to HB 58, except that it provided for a four-year rollback and had the following statement of purpose:

> "Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exlcusive of value attributed to urban influences or speculative purchases."

The Senate passed the amended version with only eight dissenting votes, among them the chief sponsor of the bill.[21]

The House Taxation Committee passed the amended SB 72 out of committee unanimously and it passed on third reading 93-3. After three sessions, a Greenbelt Law had been enacted.[22]

The committee discussions surrounding these bills are as noteworthy for what was NOT discussed as for what was. The minutes do not record any discussion of:

1. the effect of placing in statute the Board's policy of valuing ALL agricultural land on its productive capacity. The discussion centered on agricultural land near cities. The fact that SB72 as amended required all agricultural land owners to apply for the special assessment suggests that legislators may not have considered land far removed from development.

2. the application of the rollback tax to agricultural land far from cities. The first request for an Attorney General's opinion asked whether the bill and the tax applied to agricultural land not in the path of urban sprawl.

3. what constituted change in use. Since the early 1960's, the Board of Equalization had assessed land as suburban tracts as soon as the subdivision plat was filed.[23] Legislative records do not indicate whether legislators were aware of this practice and assumed its continuance after the passage of the bill or whether, to them, "change in use" was physical alteration of the land, as the Attorney General was later to hold.

4. who would pay the rollback tax. As previously noted, witnesses assumed that the seller of the property ("the farmer") would be liable for the tax. The only explicit reference was the amendment that owners of land taken by eminent domain were not subject to the rollback tax.

Perhaps because these issues were not raised in committee debate, the bill as finally enacted was vague or overly general on these points, as the administrators of the tax were to discover shortly. It did not make clear what land was liable for the rollback tax, define "change in use", specify who would pay the rollback tax, or provide a mechanism for enforcing the tax against the seller. (As a property tax, the rollback is a lien against the land, rather than a personal debt of the owner.)

B. Amendments to Montana's Greenbelt Law

The greenbelt law was amended in 1974, 1975, and 1979, and was the object of two unsuccessful bills during the 1977

session as well. Each of these bills sought to clarify some of the problems with the law that had emerged during its implementation.

Chapter 56 of the 1974 session (SB507 Mathers) repealed the requirement that all owners of agricultural land must apply for preferential assessment. Any land meeting the qualifications of the act were automatically assessed on productivity. All the $25.00 filing fees that county commissioners had collected for late applications were also to be returned. The bill also:

1. defined the phrase "actively devoted to agriculture" (which was one of the eligibility criteria for agricultural assessment in the 1973 act) as:

   "(a) It is used to produce crops including, but not limited to, grains, feed crops, fruits, vegetables; or

   (b) It is used for grazing; or

   (c) It is in a crop-land retirement program."

2. required that the land must have been valued as agricultural land from 1971-1973; and

3. allowed products grown for home consumption to be counted toward the minimum $1,000 requirement.

Chapter 457 of the 1975 session (HB488 Halvorson) was requested by the Department of Revenue to further clarify what constituted agricultural use by deleting the language that required farm houses to be assessed separately from agricultural land and by adding the two following qualifications:

"(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation."

Chapter 608 of the 1979 session (SB174 Hager) added an additional refinement of this definition. Agricultural land includes land:

> . . .used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms.

Two additional bills sought to amend the act. HB550 of the 1977 session (Vincent) would have:

1. prevented land for which a subdivision plat has been filed from being valued as agricultural land;

2. required owners seeking to have a tract of less than 40 acres assessed as agricultural land to apply annually for the classifications.

The bill was killed on second reading in the House, 71-26.

During the same session, HB398 (Fabrega) would have repealed the rollback tax provision of the "Greenbelt Law", leaving the section allowing productive valuation of agricultural land. The House Taxation Committee gave the bill an adverse committee report, which was upheld on the floor (57-32).

Thus, the legislative records suggest that, while the original intent of the bill may have been clear to participants:

1. the language of the act was too general to achieve its purpose when applied to the many varying circumstances throughout the state; and

2. the act did not include the proper mechanisms for enforcement.

The lack of clarity in the language of the act has made it very difficult to administer (as discussed in the next section) and has caused it to have effects quite different than the sponsors' intent, as documented in legislative records.

IV. ADMINISTRATION OF THE GREEN BELT LAW

As the previous section suggests, the implementation of the greenbelt law has been plagued with problems. In the six years since its passage, it has been the subject of three Attorney General's Opinions, a major decision by the State Tax Appeal Board, a still pending district court case, and dozens of directives from the Department to assessors on how to administer it. In addition, there is substantial evidence that the law has never been enforced in most of the counties.

A. Attorney General's Opinions

The first Attorney General's opinion [24] was issued in 1973, at the request of the State Department of Agriculture. It reflected the ambivalence surrounding the purpose of the law. The Department wanted clarification on:

1. whether all owners of agricultural land must apply for valuation at productive capacity or only those whose land bordered urban areas; and

2. what land was subject to the rollback tax.

The Attorney General noted that the greenbelt statutes "contain no limitations as to location of the property relative to urban areas" and held that all owners must apply in order to have their agricultural land assessed at its productive capacity. Secondly, he held that any land that has been assessed as agricultural but which is no longer used for agricultural purposes, is subject to the rollback tax.

The next Attorney General's opinion[25] concerned the effective dates for the rollback tax. The Department of Revenue asked whether it should impose the full four year rollback when this would make the period of the rollback prior to the date the bill was enacted. The Attorney General held that the period of the rollback could not begin prior to the effective date of the act. Thus, if the tax were imposed in 1974, no rollback tax would be imposed, in 1975 one years rollback, and so on. So, 1978 would be the first year in which the full rollback would be applicable.

The most recent Attorney General's opinion[26] has received the most publicity. In 1976, Robert Woodahl held that the mere filing of a subdivision plat does not constitute a "change in use" and trigger the imposition of the roll-

back tax. He noted that such land could still meet the statutory criteria of agricultural land and were, thus, entitled to assessment as such.

In its 1978 report Differential Taxation and Agricultural Land Use, the Department of Community Affairs planning staff commented on the effect of this opinion:

> ". . . in most cases, it is the lot buyer, when he builds his house, who is liable for the tax penalty, rather than the subdivider who actually initiated the land use change. The practical result of this interpretation is that the law does not recapture taxes from those who receive the benefits. Instead the subdivider receives a tax benefit at the lot buyer's expense. The roll-back creates a hidden cost for the land buyer who in most cases is probably not aware that he will be liable for a tax penalty when he purchases his property. Rather than discouraging premature and speculative land development, under this Attorney General's opinion, Montana's differential assessment law may acutally be creating a tax shelter for subdividers. The Attorney General's interpretation not only effectively neutralizes any deterrent effect the law might have had on subdivision of agricultural land but is renders the law inequitable as well.[27]

B. STAB Rulings

Hundreds of taxpayers have protested to county tax appeal boards when the rollback tax was imposed upon them, most claiming that their land was still used for agricultural purposes. In 1974, 23 decisions concerning the greenbelt law were appealed to STAB and 19 in 1975. In 35 of these 42 cases, STAB granted the taxpayers' request for continued agricultural assessment. The Department of Revenue staff have complained that STAB was far too lenient in allowing questionable property to qualify for agricultural assessment.[28]

On February 9, 1978, STAB issued an opinion concerning the greenbelt law that took the Department by surprise. It held that the rollback tax was unconstitutional because:

1. it imposes double taxation of the land, contrary to both the state and federal constitutions;

2. the language imposing the tax is "so ambiguous. . . as to be utterly meaningless and is, therefore void for vagueness";

3. it makes an unreasonable distinction between agricultural and other land, thus depriving citizens of equal protection of the law;

4. it was not uniformly applied to all persons similarly situated and, thus, deprives citizens of equal protection of law;

5. it bears no reasonable relation to any legitimate governmental purpose and is therefore void;

6. the law gives "no standards whatsoever" to define "change in use" and thus "subjects taxpayers to the imposition of a tax penalty and criminal sanctions, even though the land is being used in the same manner as ever, all in violation of the due process clauses. . .", and

7. the tax violates Article VIII, section 3 of the 1972 constitution that requires the state to equalize the value of all property because it retroactively places a higher and unequal value on the land during the years it was agricultural than was placed on other similar agricultural land whose use has not changed".[29]

Board member James Steffeck issued a concurring opinion stating that the law is "clearly discriminatory" because it "imposes a tax penalty on the free choice of some taxpayers who wish to live in the country, and not upon others who wish to live in town."[30]

STAB has stayed the rollback tax in the cases that have been appealed to it since the 1978 decision, awaiting the outcome of the district court case.[31]

C. District Court Case

A staff attorney for the Department questioned STAB's authority to declare a law unconstitutional and filed an appeal of the decision in Great Falls district court. Although the appeal was filed February 28, 1978, the case has not yet been placed on the court calendar. STAB's chairman recently wrote Judge Coder, requesting that the case be heard as soon as possible.[32]

D. Implementation of the Greenbelt Law by the Department of Revenue and by county assessors

The Department of Revenue has instructed assessors to continue assessing the rollback tax, pending the outcome of the district court case. Assessors have been instructed to:

1. Send the property owner a "notice of change in property classification" as soon as the change in use is discovered. While section 15-7-209 requires the owner to notify the county assessor when the change in use occurs and 15-7-215 makes failure to report a misdemeanor, the Department reports that very few owners have complied with this law. The Department has not prosecuted anyone for failure to comply.[33]

2. allow the taxpayer the opportunity to protest the value change to both the local and state tax appeal Boards. While 15-7-204 says the rollback tax is due and payable at the time of change in use, Department attorneys felt immediate imposition of the tax denied taxpayers' constitutional rights of appeal.[34]

3. impose the higher property tax assessment (based on the nonagricultural use) the year after the change in use occurred.

The Department has issued eight directives to county assessors since the greenbelt law was enacted, informing them of changes in the law and Attorney General's opinions and setting down uniform procedures for them to follow in determining what constitutes "change in use", how to figure the rollback, etc.[35] Appendix B contains the directive showing the calculation of the tax.

However, there is considerable evidence that the rollback tax has never been implemented in many counties. Data collected from county assessors in 40 counties *shows that the rollback

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*I am awaiting the remainder of the responses and will include them in the next report, along with further analysis of the data. Due to lack of time, I have not yet contacted any of the assessors to discuss the data or specific implementation problems in their counties.

tax has not been imposed in the majority of counties during the past three years. Tables III-IV record the counties' responses.[36] While there may have been no change in use of agricultural land in Toole county in the past three years, this is not true in Missoula or Carbon counties. Yet, no rollback taxes were imposed in either county in 1977 or 1978.

Department staff note that assessors failure to enforce the tax is caused by 1)lack of time to search out new development; 2) the knowledge that it has been declared unconstitutional by STAB and that efforts to enforce it may, in the end, be in vain; and 3) the unpopularity of the tax.[38]

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Imposition of the Rollback Tax By County
TABLE III
1977

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on which rollback tax was imposed
Beaverhead					
Big Horn	0	-	-	-	-
Blaine	1	$1,754.34	20	$87.72	20
Broadwater					
Carbon	0	-	-	-	-
Carter					
Cascade					
Choteau	0	-	-	-	-
Custer	0	-	-	-	-
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon					
Fergus	0	-	-	-	-
Flathead	25	500.00	1	500.00	25
Gallatin	371	95.97	2.55	37.64	946
Garfield	0	-	-	-	-
Glacier	106	32.00	2.98	10.74	316
Golden Valley	0	-	-	-	-
Granite					
Hill					
Jefferson					
Judith Basin	0	-	-	-	-
Lake	20	669.00	N/A	N/A	N/A
Lewis & Clark	120	295.74	27.05		3246
Liberty					
Lincoln	18	102.40	13.37	7.66	241
Madison					
McCone	0	-	-	-	-
Meagher	0	-	-	-	-
Mineral					
Missoula	0	-	-	-	-
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum					
Phillips	0	-	-	-	-
Pondera	9	4.87	2.61	1.86	23
Powder River	0	-	-	-	-
Powell	0	-	-	-	-
Prairie	0	-	-	-	-
Ravalli	90	298.08	4.79	62.23	431
Richland	0	-	-	-	-
Roosevelt	2	171.39	2.25	76.34	4.5
Rosebud	0	-	-	-	-
Sanders	19	216.30	10	21.63	190
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	18	420.35	15.2	27.65	273.6
Sweet Grass					
Teton	0	-	-	-	-
Toole	0	-	-	-	-
Treasure	0	-	-	-	-
Valley					
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone					
TOTAL (40 Counties)	799				5716.1

Imposition of the Rollback Tax By County
TABLE IV
1978

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on which rollback tax was imposed
Beaverhead					
Big Horn	15	146.71	7.77	18.88	116.55
Blaine	5	236.22	19.62	12.04	98.1
Broadwater					
Carbon	0	-	-	-	-
Carter					
Cascade					
Choteau	0	-	-	-	-
Custer	3	2774.20	2.65	1046.87	7.95
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon					
Fergus	0	-	-	-	-
Flathead	115	800.00	1	800.00	115
Gallatin	239	129.70	5.0	25.94	1195
Garfield	0	-	-	-	-
Glacier	10	22.00	2	11.00	20
Golden Valley	0	-	-	-	-
Granite					
Hill					
Jefferson					
Judith Basin	0	-	-	-	-
Lake	16	431.00	N/A	N/A	
Lewis & Clark	170	178.49	5.45	32.75	926.5
Liberty					
Lincoln	N/A	N/A	N/A	N/A	
Madison					
McCone	0	-	-	-	-
Meagher	0	-	-	-	-
Mineral					
Missoula	0	-	-	-	-
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum					
Phillips	0	-	-	-	-
Pondera	0	-	-	-	-
Powder River	0	-	-	-	-
Powell	0	-	-	-	-
Prairie	0	-	-	-	-
Ravalli	81	192.56	2.29	84.08	185.49
Richland	0	-	-	-	-
Roosevelt	0	-	-	-	-
Rosebud	44	99.56	3.6	27.66	158.4
Sanders	22	453.98	10	45.40	220
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	29	298.73	13.8	21.65	400.2
Sweet Grass					
Teton	8	123.18	2.3	53.56	18.4
Toole	1	576.42	4.85	118.85	4.85
Treasure	0	-	-	-	-
Valley					
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone					
TOTAL (40 Counties)	729				3470.44

Imposition of the Rollback Tax By County
TABLE V
1979

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on which rollback tax was imposed
Beaverhead					
Big Horn	9	217.54	13.78	15.79	124.02
Blaine	3	46.68	1.33	35.10	3.99
Broadwater					
Carbon	0	-	-	-	-
Carter					
Cascade					
Choteau	0	-	-	-	-
Custer					
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon					
Fergus	0	-	-	-	-
Flathead	99	400	1	400	
Gallatin	N/A	N/A	N/A	N/A	
Garfield	0	-	-	-	-
Glacier	1	335	1.71	195.91	1.71
Golden Valley	0	-	-	-	-
Granite					
Hill					
Jefferson					
Judith Basin	0	-	-	-	-
Lake	37	5552.00	N/A	N/A	N/A
Lewis & Clark	N/A	N/A	N/A	N/A	N/A
Liberty					
Lincoln	N/A	N/A	N/A	N/A	
Madison					
McCone	34	32.15	6.235	5.16	211.99
Meagher	0	-	-	-	-
Mineral					
Missoula	148	553.56	26.24	21.10	3883.31
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum					
Phillips	0	-	-	-	-
Pondera	0	-	-	-	-
Powder River	0	-	-	-	-
Powell	1	N/A	N/A	N/A	
Prairie	0	-	-	-	-
Ravalli	N/A	N/A	N/A	N/A	
Richland	0	-	-	-	-
Roosevelt	0	-	-	-	-
Rosebud	5	217.93	7.6		38
Sanders					
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	N/A	-	-	-	-
Sweet Grass					
Teton	4	52.82	1.53	34.53	6.12
Toole	0	-	-	-	-
Treasure	0	-	-	-	-
Valley					
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone					
TOTAL (40 counties to date)	341				4219.14

Imposition of the Rollback Tax By County
TABLE V
1979

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on which rollback tax was imposed
Beaverhead					
Big Horn	9	217.54	13.78	15.79	124.02
Blaine	3	46.68	1.33	35.10	3.99
Broadwater					
Carbon	0	-	-	-	-
Carter					
Cascade					
Choteau	0	-	-	-	-
Custer					
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon					
Fergus	0	-	-	-	-
Flathead	99	400	1	400	
Gallatin	N/A	N/A	N/A	N/A	
Garfield	0	-	-	-	-
Glacier	1	335	1.71	195.91	1.71
Golden Valley	0	-	-	-	-
Granite					
Hill					
Jefferson					
Judith Basin	0	-	-	-	-
Lake	37	5552.00	N/A	N/A	N/A
Lewis & Clark	N/A	N/A	N/A	N/A	N/A
Liberty					
Lincoln	N/A	N/A	N/A	N/A	
Madison					
McCone	34	32.15	6.235	5.16	211.99
Meagher	0	-	-	-	-
Mineral					
Missoula	148	553.56	26.24	21.10	3883.31
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum					
Phillips	0	-	-	-	-
Pondera	0	-	-	-	-
Powder River	0	-	-	-	-
Powell	1	N/A	N/A	N/A	
Prairie	0	-	-	-	-
Ravalli	N/A	N/A	N/A	N/A	
Richland	0	-	-	-	-
Roosevelt	0	-	-	-	-
Rosebud	5	217.93	7.6		38
Sanders					
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	N/A	-	-	-	-
Sweet Grass					
Teton	4	52.82	1.53	34.53	6.12
Toole	0	-	-	-	-
Treasure	0	-	-	-	-
Valley					
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone					
TOTAL (40 counties to date)	341				4219.14

V. EFFECTIVENESS OF MONTANA'S GREENBELT LAW - PRELIMINARY REMARKS

Judging the effectiveness of Montana's Greenbelt Law after the past six years' experience may be unfair because:

1. the rollback tax has only been effective for one year;

2. the law has not been administered in some counties; and

3. its implementation has been hindered by ambiguities in the law.

Moreover, I am still in the process of gathering information from county officials, agricultural and environmental groups, and other sources on the effectiveness of Montana's greenbelt law and do not have enough evidence to draw firm conclusions.

However, the evidence and responses that I have gathered to date suggest several questions the Committee may wish to discuss and consider as more data is collected.

Preferential assessment of agricultural land

The greenbelt law has two interrelated components: preferential assessment of agricultural land and the rollback tax. One of the purposes of preferential assessment, as expressed in committee hearings, was to help full-time farmers maintain their land in agricultural production by keeping their property tax bills low. As discussed in Section II, agricultural land has received preferential assessment since the 1930's and the 1973 act simply encoded this practice.

Evidence suggests that assessing agricultural land on its productive capacity rather than its market value is an important element in agricultural economics. As Table IV shows, the average market value of agricultural land in Montana has increased roughly 200% to 300% more than the average market value of the goods produced from these lands. Moreover, while the increase in the market value of land has been constant, commodity prices have been far from steady. If agricultural land were appraised on market value, property tax burdens would have taken a significantly higher portion of gross income in recent years and could have risen most sharply in years when income was lowest. Since many farms and ranches were operating in the "red" during these years, increased property taxes would perhaps have been fatal.

TABLE VI

Percentage increase in market value of Montana agricultural land, 1964-1977

Irrigated land	+251%
Grazing land	+313%
Dry cropland	+240%

Percentage increase in commodity prices received by Montana farmers and ranchers, 1964-1977

Calves	+ 75%
Wheat	+ 83%

Source: USDA, Economic Research Service, Farm Real Estate Market Developments (July, 1977), pp. 19-21; Agricultural Experiment Station (MSU), Prices Received and Prices Paid by Montana Farmers and Ranchers, 1964-1974 (July, 1975); Montana Department of Agriculture, Montana Agricultural Statistics (Dec. 1974).

However, the research suggests some questions:

1. How large a tax break is agricultural land receiving? Because agricultural land is specifically exempted from the Realty Transfer Act (15-7-307), the Department of Revenue does not have sales ratio data showing the relation between assessed and market value, nor have I discovered research on this ratio by other sources.[39] Since the values for agricultural land have not been substantially changed for over 40 years while residential and commercial property was revalued in 1957 and 1975, it seems reasonable to conjecture that the tax burden on agricultural land is decreasing relative to the tax burden or other types of property.

2. Is the tax break large enough to achieve its purpose? Are property tax incentives a significant element in farmers' and ranchers' decision to keep agricultural land in production? Department of Revenue data (Table VII) shows that a small percentage of Montana's agricultural land is taken out of production each year and that the pace of this conversion has increased since the greenbelt law was enacted. At first glance, this would seem to indicate that the tax break is insufficient inducement to keep land in agriculture. However, these figures do not measure 1) the demand for ranchettes, subdivision, and second homes, which has increased dramatically in recent years; 2) farmers' and ranchers' desire to retire from agriculture; 3) frustration with low prices, unstable markets, and high interest. In other words, property taxes may or may not be a significant factor in owners' decisions to convert agricultural land. In its exhaustive 1976 study Untaxing Open Space, the federal Council on Environmental Quality found that demographic considerations (retirement) and other economic considerations (the price offered for converting the land was too good to miss; farm prices were too low) were as important as tax rates in owners' decisions to sell the land for nonagricultural purposes. This study concludes:

   . . .preferential assessment is not very effective in maintaining current use in

TABLE VII

ACRES ASSESSED AS AGRICULTURAL LAND AND SUBURBAN TRACTS
SINCE PASSAGE OF GREENBELT LAW

Year	Irrigated	Non-Irrigated	Grazing	Wild Hay	Other Ag. Land	Total Ag. Land	Suburban Tract
1973	1,363,171	11,540,777	37,976,082	893,281		51,773,311	289,876
1974	1,279,346	11,337,870	36,483,041	888,830		49,989,087	344,794
1975	1,364,033	11,575,222	37,285,360	886,869	2,064	51,113,548	409,054
1976	1,370,765	11,601,771	37,210,260	892,331	701	51,075,828	334,502
1977	1,367,438	11,102,770	37,340,509	888,537	911	50,700,160	339,435
1978	1,490,497	11,605,171	36,789,746	1,095,942	1,026	50,982,382	459,118
Total Acres Gained or lost 1973-1978	+127,326	+74,394	-1,186,336	+202,661		-790,929	+169,242
% Change	+9.3%	+.56%	-3.1%	+22.7%		-1.5%	+58.4%
1967	1,359,832	11,483,848	38,476,359	883,738		52,153,777	104,754
1968	1,362,514	11,523,229	38,397,218	831,382		52,114,343	117,005
1969	1,353,867	11,477,793	38,576,078	838,277		52,145,015	139,115
1970	1,351,851	11,479,040	38,475,439	835,487		52,141,817	158,912
1971	1,361,504	11,520,596	38,330,977	866,334		52,079,411	190,430
1972	1,362,485	11,514,455	38,287,553	873,339		52,037,832	225,886
Total Acres Gained or lost 1967-1972	+2,653	+30,607	-188,806	-10,399		-115,945	+121,132
% Change	+.2%	+.3%	-.5%	-1.2%		-.21%	+116%

Source: Biennial Reports of the State Board of Equalization and Dept. of Revenue, 1966-1978.

urban fringe areas even in the short run. In the long run, where death and retirement and the demand for land for other uses play the major roles in the decision process, it is of very little significance indeed.[40]

I will be gathering further data bearing on these questions as the study continues.

Rollback Tax

The purpose of the rollback tax, as expressed in Committee hearings, was to provide a tax disincentive for farmers to develop their land.* The problems that have arisen during the administration of this act suggest certain questions:

1. Since the rollback tax is now imposed on the new owner of land recently converted agricultural uses rather than on the seller and developer of the land, can it act as a deterrent to the development? Two elements in the current law prevent the Department from requiring the seller to pay the tax:

   a) The Attorney General has implied that the "change in use" that triggers the imposition of the tax must be a physical change in the land that precludes agricultural use; and b) the tax, because it is a property tax, is a lien against the land rather than a personal debt. Even if the Department were able to bill the seller for the tax, he could simply fail to pay it, whereupon it would become a lien against the land, which the new owner would have to pay. The only way in which the tax may act as a deterrent under present conditions is if the buyer is aware that it will be imposed and if this extra expense convinces him not to buy.

2. Are buyers of rural homesites aware enough of the rollback tax to consider it in making decisions to buy land recently converted from agricultural use? Newspaper accounts and county tax appeal records[41] contain numerous accounts of new homeowners' ignorance of the tax until it was imposed. However, recent publicity on the subject may have increased public awareness.

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*At least one 1973 newspaper clipping suggests that another purpose of the rollback tax was to help local government pay for the increased costs of developed land. (Billings Gazette, Feb. 7, 1973) However, Committee minutes contain no reference to this concept.

3. Is the rollback tax large enough to dissuade buyers from purchasing former agricultural land? Theoretically, the rollback tax can be effective only if it is large enough to influence people not to buy recently converted land. As Tables III-V show, the average rollback tax is less than $50 per acre. With rural homesite land ranging between $1,000 and $8,000 an acre, this tax may not be an important consideration.

4. Is the tax imposed and enforced often enough and in a consistent enough manner to serve as a disincentive? As Tables III-V detail, most counties have not imposed the rollback tax during the past three years. Some evidence suggests that the tax is being applied to only a fraction of the agricultural land taken from production. The Department of Community Affairs estimates that 214,702.54 acres of land were subdivided in Montana between July 1, 1973 and Fall, 1976, or 85,880 acres a year and that the number of acres has increased 10%-15% a year.[42] Yet, in the 40 counties responding to date, only 13,456 acres have been subject to the rollback tax during the past 2 1/2 years, or 5,382 acres a year.* Moreover, people who fail to report change in use of agricultural land are not prosecuted, even in the counties in which the tax is imposed. These factors may diminish the law's deterrent effect.

5. Is the rollback tax counterproductive? In its 1978 report Differential Taxation and Agricultural Land Use, DCA staff noted:

> . . . under the statute, the roll-back tax varies directly with the undeveloped market value of the land in question. Accordingly, the less valuable the land is for non-agricultural purposes, the lower the roll-back tax will be when it is taken out of agricultural production. Second, as a general rule, the farther land lies from an urban center, the less valuable it is for development purposes. (This relationship is less clear when

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*Since subdivided land is not necessarily subject to the rollback tax, these figures should be viewed with this in mind.

> land is desirable for second home or recreational development.) Thus, the statute tends to encourage the conversion of land located at a distance from existing urban areas and to discourage urbanization of land adjacent to cities and towns.[43]

However, this point may not be important if the rollback tax is too small to influence economic decisions concerning land conversion.

Future reports will contain additional information on these points, as well as information on the effectiveness of greenbelt laws in other states.

FOOTNOTES

1. First, Second, Third, Fourth, and Fourteenth Biennial Report of the State Board of Equalization, 1924, 1926, 1928, 1930, 1950. See particularly the Fourteenth Report (1948-50), pp. 7-8.

2. Second Biennial Report of the State Board of Equalization 1926), pp. 51-53.

3. Fourth Biennial Report (1928-30), p. 4; Eighth Biennial Report (1936-38), pp 3, 53, 55.

4. Information from Dennis Burr, Administrator, Property Assessment Division, and Ralph Krieg, Real Property Bureau Chief.

5. Nineteenth Biennial Report, 1958-60, p. 2. State Board of Equalization v. Kovich, 383 P. 2d 818 (1963). Information from Ralph Krieg.

6. Information from Dennis Burr and Ralph Krieg.

7. Ibid.

8. Department of Revenue v. Kenneth Mackley, STAB Doc. No. PT-1976-39.

9. Department of Revenue v. Bauer, STAB Doc. No. PT-1977-59.

10. Information from Dennis Burr and Ralph Krieg.

11. Senate Taxation Committee Minutes, January 26, 1969.

12. Senate Taxation Committee Minutes, January 30, 1969. Senate Journal, February 11, 1969.

13. House Ways and Means Committee Minutes, February 20, February 21, and February 25, 1969.

14. House Ways and Means Committee Minutes, February 4, 1971.

15. House Ways and Means Committee Minutes, February 9, 1971. House Journal, February 12, 1971.

16. Senate Taxation Committee Minutes, February 18, 1971.

17. House Taxation Committee Minutes, January 16, 1973 and January 1973.

18. 1973 House Journal, 26th, 27th, and 29th legislative days.

19. Senate Taxation Committee Minutes, January 16, 1973 and February 13, 1973.

20. Senate Taxation Committee Minutes, March 10, 1973.

21. Senate Journal, 5th legislative day.

22. House Taxation Committee Minutes, March 17, 1973. 1973 House Journal of the Special Session, 8th legislative day.

23. Information from Mantz Hutchinson, Asst. Administrator, Property Assessment Division.

24. Attorney General's Opinion No. 29 (vol. 35), September 27, 1973.

25. Informal opinion, letter from Woodahl to Groff, November 19, 1974.

26. Attorney General's opinion no. 51 (vol. 36), January 20, 1976.

27. DCA, Differential Taxation and Agricultural Land Use (January 1978), p. 17.

28. Information from Helen Peterson, Chairman of the State Tax Appeal Board. Montana Legislative Council, Preservation of Agricultural Lands: Alternative Approaches (1976), pp. 13-14.

29. Department of Revenue vs. Sun Prairie Village, STAB Doc. No. PT-1977-20.

30. Ibid.

31. Information from Helen Peterson.

32. Information from Bruce McGinnis, Legal Counsel, Department of Revenue, and Helen Peterson. The case is Cause No. 84585c in the 18th Judicial District.

33. Information from Mantz Hutchinson.

34. Letter from Dennis Burr to all county assessors and appraisers, August 31, 1976.

35. Letters dated March 15, 1979, April 17, 1978, August 23, 1977, August 31, 1976, February 3, 1975, August 7, 1974, March 1, 1974, September 7, 1973.

36. Dennis Burr wrote to all county assessors on July 25, 1979, requesting information on the rollback tax. As of August 22, 40 had responded.

37. Oral directive from Ralph Krieg to county assessors, May 1975. Written directive, March 15, 1979.

38. Information from Dennis Burr, Mantz Hutchinson, Ralph Krieg.

39. Verified by Dick Southern, Chief of the Mass Appraisal Bureau, Property Assessment Division.

40. Council on Environmental Quality, Untaxing Open Space (April 1976), pp. 53-56, 68.

41. DCA, Differential Taxation....., pp. 8-9.

42. DCA, Land Division in Montana (January 1977), p. 23. Information from Steve Granzow, Planning Division, DCA. I recognize that these figures prepared by DCA have been questioned by the Montana Realtors Association and the Montana Association of Registered Land Surveyors. However, data collected by these groups showing subdivisions and certificates of survey filed in eight counties from the period July 1, 1973 to February 24, 1975 show 68,831 acres - still far higher than the number of acres to which the rollback tax was imposed.

Classes and Grades
for Montana Agricultural Land Classification

Schedule 1

NON-IRRIGATED FARM LAND

Grade	Bu. of wheat per acre on summer fallow
1A8	40 & over
1A7	38 - 39
1A6	36 - 37
1A5	34 - 35
1A4	32 - 33
1A3	30 - 31
1A2	28 - 29
1A1	26 - 27
1A	24 - 25
1B	22 - 23
2A	20 - 21
2B	18 - 19
2C	16 - 17
3A	14 - 15
3B	12 - 13
4A	10 - 11
4B	8 - 9
5	Under 8

NON-IRRIGATED CONTINUOUSLY CROPPED FARM LAND

Grade	Bushels of wheat per acre
1A4	44 & over
1A3	42 - 43
1A2	40 - 41
1A1	38 - 39
1A	36 - 37
1	34 - 35
2	32 - 33
3	30 - 31
4	28 - 29
5	26 - 27
6	24 - 25
7	22 - 23
8	20 - 21
9	18 - 19
10	16 - 17
11	14 - 15
12	12 - 13
13	10 - 11
14	Less than 10

WILD HAY LAND

Grade	Tons of hay per acre
1	3.0 & over
2	2.5 - 2.9
3	2.0 - 2.4
4	1.5 - 1.9
5	1.0 - 1.4
6	.5 - .9
7	Less than .5

*Note: About 4 range ewes with lambs are considered the equivalent of a 1000-lb. steer. Calves are usually not considered until weaned, and 4 yearling steers or heifers are considered as equivalent to three 1000-lb. steers. A dry cow is considered the equivalent of a 1000-lb. steer. About 4 cows with calves are considered the equivalent of five 1000-lb. steers.

42-2.22(1)-S2250 AGRICULTURAL LANDS (1) The Department of Revenue has herein adopted and incorporated The pamphlet, "Procedures and Instructions for Land Reclassification and Reappraisal," and all amendments and supplements thereto by reference Copies of this pamphlet may be reviewed in this Department or may be purchased from the Department at cost plus mailing.

(2) Current schedules for determining grade, classification, and assessed value per acre, as outlined in the pamphlet adopted and referenced in subsection (1) of this rule, are as follows:

Classes and Grades for Montana Agricultural Land Classification

Schedule 1

TILLABLE IRRIGATED LAND

Grade	Tons of alfalfa per acre
1A	4.5 & over
1B	4.0 - 4.4
2	3.5 - 3.9
3	3.0 - 3.4
4	2.5 - 2.9
5	2.0 - 2.4
6	1.5 - 1.9
7	1.0 - 1.4
8	Less than 1.0

GRAZING LAND*

Grade	Acres for 10 mo. grazing season per 1,000 lb. steer or equivalent
1A2	Under 3 Acres
1A1	3 - 5 Acres
1A*	5 - 6 Acres
1A	6 - 10 Acres
1B	11 - 18 Acres
2A	19 - 21 Acres
2B	22 - 27 Acres
3	28 - 37 Acres
4	38 - 55 Acres
5	56 - 99 Acres
6	100 Acres or over

CLASSES, GRADES, AND VALUE
FOR MONTANA AGRICULTURAL LAND

Schedule 2

GRAZING LAND

Grade	Ac. Per 1000# Steer 10 Mos.	Assessed Value Per Acre
1A2	Under 3	71.69
1A1	3 - 5	44.18
1A+	5 - 6	31.27
1A	6 - 10	20.51
1B	11 - 18	10.53
2A	19 - 21	7.17
2B	22 - 27	5.42
3	28 - 37	3.72
4	38 - 55	2.52
5	56 - 99	1.47
6	100 or over	.82

NON-IRRIGATED CONTINUOUSLY CROPPED FARM LAND

Grade	Bu. of Wheat Per Acre Each Year	Assessed Value Per Acre
1A4	44 & over	125.71
1A3	42 - 43	116.94
1A2	40 - 41	108.17
1A1	38 - 39	99.40
1A	36 - 37	90.63
1	34 - 35	81.86
2	32 - 33	73.09
3	30 - 31	64.81
4	28 - 29	57.05
5	26 - 27	49.75
6	24 - 25	42.96
7	22 - 23	36.67
8	20 - 21	30.87
9	18 - 19	25.56
10	16 - 17	20.75
11	14 - 15	16.41
12	12 - 13	12.59
13	10 - 11	9.25
14	Less than 10	6.41

CLASSES, GRADES, AND VALUE
FOR MONTANA AGRICULTURAL LAND

Schedule 2

NON-IRRIGATED FARM LAND

Grade	Bu. Wheat Per A. on Summer Fallow	Assessed Value Per Acre
1A8	40 & Over	81.08
1A7	38 - 39	74.51
1A6	36 - 37	67.94
1A5	34 - 35	61.37
1A4	32 - 33	54.80
1A3	30 - 31	48.60
1A2	28 - 29	42.79
1A1	26 - 27	37.31
1A	24 - 25	32.22
1B	22 - 23	27.50
2A	20 - 21	23.15
2B	18 - 19	19.17
2C	16 - 17	15.56
3A	14 - 15	12.31
3B	12 - 13	9.44
4A	10 - 11	6.94
4B	8 - 9	4.81
5	Under 8	3.06

WILD HAY LAND

Grade	Tons of Hay Per Acre	Assessed Value Per Acre
1	3.0 & Over	67.60
2	2.5 - 2.9	53.03
3	2.0 - 2.4	41.38
4	1.5 - 1.9	29.43
5	1.0 - 1.4	19.38
6	.5 - .9	10.05
7	Less than .5	5.54

0041

TILLABLE IRRIGATED LANDS

Class 3 (Minimum Rotation) Assessed Value
Per Acre by Water Cost Classes

Grade	Tons Alfalfa Per Acre	Under $1.50	$1.50 2.49	$2.50 3.49	$3.50 4.49	$4.50 5.49	$5.50 6.49	$6.70 7.49	$7.50 & Over
1A	4.5+	86.26	79.60	72.93	66.27	59.60	52.94	46.27	39.60
1B	4.0-4.4	73.84	68.14	62.43	56.72	51.02	45.31	39.60	33.90
2	3.5-3.9	62.01	57.22	52.43	47.64	42.84	38.05	33.26	28.47
3	3.0-3.4	50.79	46.86	42.94	39.02	35.09	31.16	27.24	23.32
4	2.5-2.9	40.15	37.05	33.95	30.85	27.74	24.64	21.54	18.43
5	2.0-2.4	30.11	27.78	25.46	23.13	20.80	18.48	16.15	13.82
6	1.5-1.9	19.86	18.67	17.47	16.27	15.07	13.87	12.67	11.47
7	1.0-1.4	11.37	10.69	10.00	9.31	8.63	7.94	7.25	6.57
8	-1.0	4.55	4.28	4.00	3.72	3.45	3.18	2.90	2.63

(History: Sec. 84-429.12, R.C.M. 1947; Order MAC No. 42-1; Adp. 12/22/72; Eff. 12/31/72; AMD, MAC Not. No. 42-2-80; Order MAC No. 63; Adp. 1/12/77; Eff. 2/3/77.)

TILLABLE IRRIGATED LANDS

Class 1 (Maximum Rotation) Assessed Value Per Acre by Water Cost Classes

Grade	Tons Alfalfa Per Acre	Under $1.50	$1.50 2.49	$2.50 3.49	$3.50 4.49	$4.50 5.49	$5.50 6.49	$6.50 7.49	$7.50 & Over
1A	4.5+	110.40	103.74	97.07	90.40	83.74	77.07	70.40	63.74
1B	4.0-4.4	94.70	88.98	83.26	77.55	71.83	66.11	60.39	54.68
2	3.5-3.9	78.70	73.96	69.20	64.45	59.70	54.94	50.19	45.44
3	3.0-3.4	63.70	59.85	56.00	52.16	48.31	44.47	40.62	36.78
4	2.5-2.9	48.53	45.60	42.67	39.74	36.81	33.88	30.95	28.02
5	2.0-2.4	31.92	30.00	28.07	26.14	24.21	22.29	20.36	18.43
6	1.5-1.9	19.86	18.67	17.47	16.27	15.07	13.87	12.67	11.47
7	1.0-1.4	11.37	10.69	10.00	9.31	8.63	7.94	7.25	6.57
8	-1.0	4.55	4.28	4.00	3.72	3.45	3.18	2.90	2.63

Class 2 (Medium Rotation) Assessed Value Per Acre by Water Cost Classes

Grade	Tons Alfalfa Per Acre	Under $1.50	$1.50 2.49	$2.50 3.49	$3 50 4.49	$4 50 5.49	$5.50 6.49	$6 50 7 49	$7.50 & Over
1A	4.5+	97 26	90.60	83.93	77 27	70.60	63.94	57.27	50.60
1B	4 0-4 4	81 72	76.12	70.52	64.92	59.32	53.72	48.12	42 52
2	3.5-3 9	67.27	62.66	58.05	53.44	48 83	44.22	39 61	35.00
3	3.0 3 4	53.90	50.21	46.51	42.82	39.12	35.43	31 73	28.04
4	2 5-2 9	41 60	38.76	35.90	33.05	30.20	27 35	24.49	21.65
5	2.0-2 4	30 39	28 31	26 22	24 14	22 06	19.98	17.89	15.81
6	1.5-1 9	19.86	18 67	17.47	16.27	15.07	13.87	12.67	11.47
7	1 0-1 4	11 37	10 69	10 00	9.31	8 63	7.94	7.25	6 57
8	-1.0	4.55	4.28	4 00	3.72	3.45	3.18	2.90	2 63

Example I

Ag. Land Use @ $5.42/Acre Assessed Value

Use Change September 7, 1977

Appraised Value Bareland $1,000/Acre

Assessed Value $ 400/Acre

Roll-Back $400 x 4 = $1,600

Taxable Value 1,600 x .30 = $480

1974	Mill Levy	192.35	x	1.63	=	.31	Ag. Tax
1975	Mill Levy	199.26	x	1.63	=	.32	Ag. Tax
1976	Mill Levy	198.15	x	1.63	=	.32	Ag. Tax
1977	Mill Levy	201.22	x	1.63	=	.33	Ag. Tax
						$1.28	
		790.98	÷	4	=	197.75	Avg. Mill Levy

$480.00
X.19775

$ 94.92
- 1.28

$ 93.64 Roll-Back Tax

This tax becomes a lien upon the land September 7, 1977. The tax will be payable after the 1978 tax appeal hearings. The tax will be in addition to the tax levied upon the land for the 1978 tax year.

Example II

Ag. Land Use @ $5.42/Acre Assessed Value

Use Change Occurred September 1, 1974

Use Change Discovered September 7, 1977

Appraised Value Bareland $1,000/Acre

Assessed Value Bareland $ 400/Acre

Taxable Value Bareland $ 120/Acre

1974 Mill Levy 192.35

1975 Mill Levy 199.26

1976 Mill Levy 198.15

1977 Mill Levy 201.22

Erroneous Assessment Tax	1974 =	.31
Erroneous Assessment Tax	1975 =	.32
Erroneous Assessment Tax	1976 =	.32
Erroneous Assessment Tax	1977 =	.33
Total Four Year Tax		$1.28

If this situation were corrected by a roll-back in 1977 the result would be:

1974 Tax	$120 x 192.35 =	$ 23.08
1975 Tax	$120 x 199.26 =	23.91
1976 Tax	$120 x 198.15 =	23.78
1977 Tax	$120 x 201.22 =	24.15
		$ 94.92
Less Tax Paid		1.28
		$ 93.64

This figure is the same as that arrived at in Example I.

The appraised value of this land subject to the roll-back tax is as unsubdivided and unimproved for the years of 1974 thru 1977. It is possible that the value of the land in 1978 would be considerably higher than that used for the roll-back. Liability

to the roll-back tax shall attach only when a use change occurs.

The filing of a subdivision plat or ownership change does not constitute a use change unless there are restrictive convenants to the use as agricultural. (84-437.8 and 84-437.9) Notice of Change in Reclassification of Land From Agricultural to some other use must be sent to the land owner upon discovery of a use change (Form AB-15). The property owner may petition the Department of Revenue to reclassify the land as agricultural by completing the Form AB-3 and producing whatever information is necessary as proof that the land meets the definition of agricultural land. (84-437.15 and 84-437.2.)

The owner of land which has been in agricultural use and is applied to another use shall notify the county assessor who shall cause to be recorded by the county recorder the following statement:

"On the _____ day of _____, 19_____, this land became subject to the roll-back tax imposed by Section 84-437.4" (84-437.16)

An undiscovered use change of agricultural land will be taxed the roll-back tax upon discovery. This in no way would cause any undue damage to the taxpayer. (See Example II.)

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RESEARCH MEMORANDUM

SUBJECT: GREENBELT LAWS IN OTHER STATES: THEIR PROVISIONS, THEIR EFFECTIVENESS, AND ALTERNATIVES

DATE: November 8, 1979

PREPARED FOR: Revenue Oversight Committee

PREPARED BY: Teresa Olcott Cohea, Staff Researcher

The following memorandum contains 1) information specifically requested at the Committee's last meeting and 2) background research stipulated under the Committee's study plan for HJR 42.

Since this report contains material that will be familiar to members who have followed this subject for six years, I have prepared the following detailed table of contents. Members can, thus, turn to the sections in which they have a particular interest and use the remainder only as a reference.

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I. SUMMARY OF THE REPORT

A. One of the statutory provisions for productive capacity assessment of agricultural land was added to SB 72 (the bill enacting Montana's greenbelt law) as a result of HB 15 (a bill to implement the 1972 Constitution's abolition of the State Board of Equalization).

B. Rollback taxes have not been imposed in 32 of Montana's counties and have been imposed only sporadically in many of the other counties.

C. Forty-nine states offer some type of property tax incentive for preservation of agricultural land: lower tax rates, pure preferential assessment, deferred taxation, or restrictive agreements.

D. These states have established eligibility criteria for these tax incentives to distinguish "bona fide" farmers from "hobby" farmers and, in some cases, to achieve other goals.

E. Estimating the amount of tax savings farmers receive and the tax shifts caused by these greenbelt programs is difficult because most states do not keep adequate records.

F. Twenty-six states impose a rollback tax for the conversion of agricultural land. The period of rollback varies in these states from 2 - 20 years.

G. Greenbelt programs are generally effective at providing farmers with tax relief, but they are considered only marginally effective in halting the conversion of agricultural land to other uses. The chief reason for this failure is that property tax incentives are too small compared to capital gains realized through the sale of land for development.

H. Numerous suggestions for improving and alternatives to greenbelt laws are outlined on pages 26 and 27.

II. CLARIFICATION OF THE ORIGINAL INTENT OF MONTANA'S GREENBELT LAW

As members noted at the September meeting, four subsections of Montana statute provide for the assessment of agricultural land on its productive capacity:

> 1) 15-7-103(2). All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.
>
> 2) 15-7-103(4). All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.
>
> 3) 15-7-203. Agricultural uses only considered in valuation. In valuing land as agricultural, the department of revenue shall consider only those indicia of value which such land has for agricultural use.
>
> 4) 15-8-111(5)...All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

The first provision [15-7-103(2)] was enacted in 1957 as part of a larger bill providing for the reclassification and reappraisal of all land in the state.[1] Although it provided guidelines for assessing agricultural land, it did not define what land was to be so assessed. As previously noted, assessors operating under this law sometimes changed the classification of land on the fringes of cities from agricultural to suburban tract even though no change in the use of the land had occurred, in the belief that the land now had a potential "better or higher" use than agricultural. This land was then taxed at its "full and true" value rather than on its productive capacity.[2]

The next three sections of law were all enacted in SB 72 of the 1973 session in response to this practice. The legislative history of this bill, which is commonly called Montana's "greenbelt bill", was traced in the research memorandum of 22 August 1979.

This legislative history did not, however, detail the interaction between SB 72 and HB 15. HB 15 was introduced in the 1973 session by Representative Shelden at the request of the Department of Revenue to implement that portion of the 1972 Constitution that removed the State Board of Equalization as the administrator of Montana's tax laws. HB 15 deleted reference to the Board in the appropriate 250 sections and assigned these tax duties to the Department of Revenue.

HB 15 passed the House with some opposition but no amendments proposed or adopted.[3] However, in the Senate Taxation Committee members raised some concerns. While no statute gave the Board of Equalization explicit authority to assess land in its productive

capacity, the 1889 Constitution gave the Board the power to "adjust and equalize the valuation of taxable property." The 1972 Constitution, however, said only "The state shall appraise, assess, and equalize the valuation of all property, which is to be taxed in the manner provided by law" (emphasis added). Several long-time Tax Committee members argued that the new Department of Revenue could be forced under this new language to value all land on its market value.[4] Therefore, these members suggested and the Committee agreed that the following additional section should be amended in the bill by adding the underlined language:

> "84-401. Property assessed at cash value. All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes and shall be so valued unless a different use is demonstrated. Land and the improvements thereon must be separately assessed."

Two days later, the Senate Taxation Committee added this section with the same amendment to SB 72, the "greenbelt" bill. The Senate adopted the amendment in each bill.[5]

Unfortunately, legislative records contain only the fact of what happened next, not the reasons. The House rejected this Senate amendment to HB 15 and a conference committee from each house was appointed. The Senate members of the conference committee, however, refused to come to an agreement until SB 72, with its assurance of continued productive capacity assessment for agricultural land, passed the House.[6] The House Taxation Committee, therefore, heard and passed the bill out of Committee in a single day. The conference committee on HB 15 met on the day the bill passed second reading in the House and the Senate members agreed to withdraw the amendment in HB 15. Thus, SB 72, containing the amendment to 84-401 originally placed in HB 15 by the Senate Taxation Committee, was passed on third reading in the House on the same day that the Senate and House agreed to adopt the conference committee report on HB 15, deleting the amendment to 84-401.[7]

So, the three major sections of law providing for the continued assessment of agricultural land on its productive capacity were all enacted as part of the "greenbelt" law.

III. FURTHER DATA ON THE IMPOSITION OF THE ROLLBACK TAX IN MONTANA COUNTIES

Fifty-five counties have now furnished information on the imposition of the rollback tax in their counties.* Tables I - III show the number of parcels on which the tax was imposed in 1977, 1978, and 1979, the average amount of rollback tax imposed on these parcels, and the average tax per acre.

---

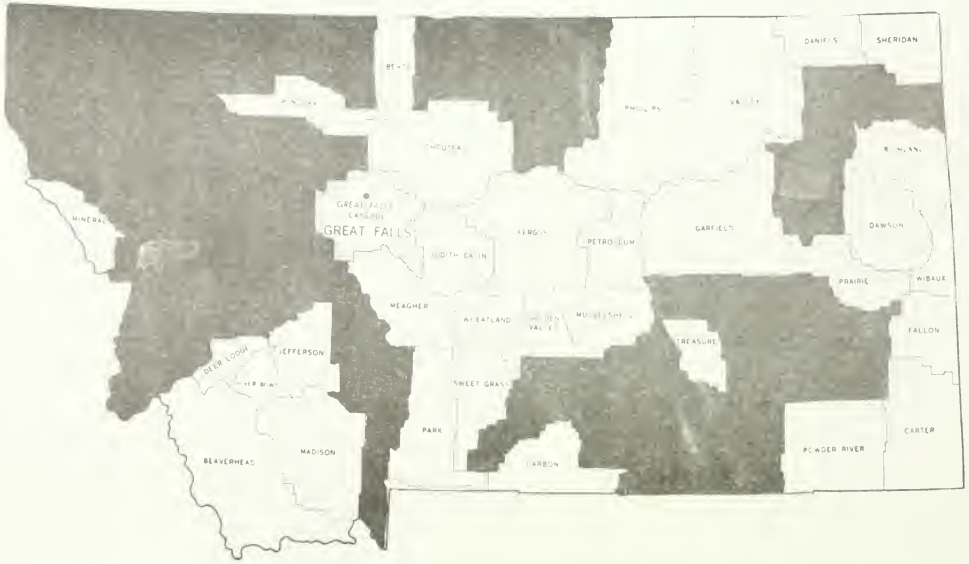
*Only 40 counties had responded when the Committee last met.

As these tables show, no rollback tax has ever been imposed in 32 of the 55 counties. Table IV illustrates that the tax has been imposed on property in the northwestern and south-central portions of the state but only in scattered areas throughout the rest of Montana.

The tax has been imposed sporadically even in those 23 counties that have levied rollback taxes. Missoula County did not impose the tax until 1979. Cascade County planned to impose the tax on 489 acres in 1977 but was stayed from doing so or from imposing the tax in the other two years by the State Tax Appeal Board until the District Court had ruled on the "greenbelt" case. Broadwater County mailed out rollback tax notices in 1979 for changes in use that occurred during the three-year period 1977-79, so ownership of the land may have changed several times since the change in use occurred.

TABLE IV

THE IMPLEMENTATION OF MONTANA'S GREENBELT LAW: COUNTIES IN WHICH THE ROLLBACK TAX WAS IMPOSED, 1977-1979



SOURCE: Data from county assessors in all counties except Silver Bow

TABLE I

IMPOSITION OF THE ROLLBACK TAX BY COUNTY
1977

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on Which Rollback Tax was Imposed
Beaverhead	0	-	-	-	-
Big Horn	0	-	-	-	-
Blaine	1	$1,754.34	20	$ 87.72	20
Broadwater	0	-	-	-	-
Carbon	0	-	-	-	-
Carter	0	-	-	-	-
Cascade	0*	-	-	-	-
Chouteau	0	-	-	-	-
Custer	0	-	-	-	-
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon	0	-	-	-	-
Fergus	0	-	-	-	-
Flathead	25	500.00	1	500.00	25
Gallatin	371	95.97	2.55	37.64	945.7
Garfield	0	-	-	-	-
Glacier	106	32.00	2.98	10.74	316
Golden Valley	0	-	-	-	-
Granite	6	1,023.00	1.19	859.66	7.14
Hill	5	573.17	5.16	111.08	15.5
Jefferson	28	1 135.97	6.13	22.18	171.6
Judith Basin	0	-	-	-	-
Lake	20	669.00	N/A	N/A	N/A
Lewis & Clark	120	295.74	27.05	-	3246
Liberty	0	-	-	-	-
Lincoln	18	102.40	13.37	7.66	241
Madison	0	-	-	-	-
McCone	0	-	-	-	-
Meagher	0	-	-	-	-
Mineral	0	-	-	-	-
Missoula	0	-	-	-	-
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum	N/A	N/A	N/A	N/A	N/A
Phillips	0	-	-	-	-
Pondera	9	4.87	2.61	1.86	23
Powder River	0	-	-	-	-
Powell	0	-	-	-	-
Prairie	0	-	-	-	-
Ravalli	90	298.08	4.79	62.23	431
Richland	0	-	-	-	-
Roosevelt	2	171.39	2.25	76.34	4.5
Rosebud	0	-	-	-	-
Sanders	19	216.30	10	21.63	190
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	18	420.35	15.2	27.65	273.6
Sweet Grass	0	-	-	-	-
Teton	0	-	-	-	-
Toole	0	-	-	-	-
Treasure	0	-	-	-	-
Valley	0	-	-	-	-
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone	3	1,452.67	6.52	222.80	19.6
TOTAL (55 Counties)	841				5929.5

*In 1977, assessor's record showed that 488.73 acres were subject to the rollback tax, but STAB instructed him that no tax was to be imposed until Judge Coder ruled on the "greenbelt" case.

TABLE II

IMPOSITION OF THE ROLLBACK TAX BY COUNTY
1978

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on Which Rollback Tax was Imposed
Beaverhead	0	-	-	-	-
Big Horn	15*	$ 146.71*	7.77*	$ 18.88*	116.6*
Blaine	5	236.22	19.62	12.04	98.1
Broadwater	0	-	-	-	-
Carbon	0	-	-	-	-
Carter	0	-	-	-	-
Cascade	0	-	-	-	-
Chouteau	0	-	-	-	-
Custer	3	2,774.20	2.65	1,046.87	8.0
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon	0	-	-	-	-
Fergus	0	-	-	-	-
Flathead	115	800.00	1	800.00	115
Gallatin	239	129.70	5	25.94	1195
Garfield	0	-	-	-	-
Glacier	10	22.00	2	11.00	20
Golden Valley	0	-	-	-	-
Granite	0	-	-	-	-
Hill	21	472.65	2.53	186.81	27.8
Jefferson	0	-	-	-	-
Judith Basin	0	-	-	-	-
Lake	16	431.00	N/A	N/A	
Lewis & Clark	170	178.49	5.45	32.75	926.5
Liberty	0	-	-	-	-
Lincoln	N/A	N/A	N/A	N/A	
Madison	0	-	-	-	-
McCone	0	-	-	-	-
Meagher	0	-	-	-	-
Mineral	0	-	-	-	-
Missoula	0	-	-	-	-
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum	N/A	N/A	N/A	N/A	N/A
Phillips	0	-	-	-	-
Pondera	0	-	-	-	-
Powder River	0	-	-	-	-
Powell	0	-	-	-	-
Prairie	0	-	-	-	-
Ravalli	81	192.56	2.29	84.08	185.5
Richland	0	-	-	-	-
Roosevelt	0	-	-	-	-
Rosebud	44	99.56	3.6	27.66	158.4
Sanders	22	453.98	10	45.40	220
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	29	298.73	13.8	21.65	400.2
Sweet Grass	0	-	-	-	-
Teton	8	123.18	2.3	53.56	18.4
Toole	1	576.42	4.85	118.85	4.8
Treasure	0	-	-	-	-
Valley	0	-	-	-	-
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone	0*	-	-	-	-
TOTAL (55 Counties)	779				3494.3

*Includes rollback taxes on one parcel cancelled by the County Tax Appeal Board.

**Yellowstone County did not impose rollback this year because taxpayers had insufficient time to appeal. The notices were sent out in 1979.

TABLE III

IMPOSITION OF THE ROLLBACK TAX BY COUNTY
1979

County	No. of Parcels	Average Rollback Tax Imposed	Average Size of Parcel (acres)	Tax per Acre	Total No. Acres on Which Rollback Tax was Imposed
Beaverhead	0	-	-	-	-
Big Horn	9*	$ 217.54*	13.78	$ 15.79*	124*
Blaine	3	46.68	1.33	35.10	4
Broadwater	115**	103.23	3.41	30.27	392.2
Carbon	0	-	-	-	-
Carter	0	-	-	-	-
Cascade	0	-	-	-	-
Chouteau	0	-	-	-	-
Custer	0	-	-	-	-
Daniels	0	-	-	-	-
Dawson	0	-	-	-	-
Deer Lodge	0	-	-	-	-
Fallon	0	-	-	-	-
Fergus	0	-	-	-	-
Flathead	99	400.00	1	400.00	
Gallatin	N/A	N/A	N/A	N/A	
Garfield	0	-	-	-	-
Glacier	1	335.00	1.71	195.91	1.7
Golden Valley	0	-	-	-	-
Granite	19	N/A	12.23	N/A	232.4
Hill	6	190.76	2.974	64.14	17.8
Jefferson	0	-	-	-	-
Judith Basin	0	-	-	-	-
Lake	37	5,552.00	N/A	N/A	N/A
Lewis & Clark	N/A	N/A	N/A	N/A	N/A
Liberty	0	-	-	-	-
Lincoln	N/A	N/A	N/A	N/A	
Madison	0	-	-	-	-
McCone	34	32.15	6.235	5.16	212
Meagher	0	-	-	-	-
Mineral	0	-	-	-	-
Missoula	148	553.56	26.24	21.10	3883.3
Musselshell	0	-	-	-	-
Park	0	-	-	-	-
Petroleum	0	-	-	-	-
Phillips	0	-	-	-	-
Pondera	0	-	-	-	-
Powder River	0	-	-	-	-
Powell	1	N/A	N/A	N/A	
Prairie	0	-	-	-	-
Ravalli	N/A	N/A	N/A	N/A	
Richland	0	-	-	-	-
Roosevelt	0	-	-	-	-
Rosebud	5	217.93	7.6		38
Sanders	N/A	N/A	N/A	N/A	N/A
Sheridan	0	-	-	-	-
Silver Bow					
Stillwater	N/A	-	-	-	-
Sweet Grass	00	-	-	-	-
Teton	4	52.82	1.53	34.53	6.1
Toole	0	-	-	-	-
Treasure	0	-	-	-	-
Valley	0	-	-	-	-
Wheatland	0	-	-	-	-
Wibaux	0	-	-	-	-
Yellowstone	347***	N/A	346.5****	-	120,247
TOTAL (55 Counties)	807				125,263.8

*Includes rollback tax imposed on four parcels that was later cancelled by the County Tax Appeal Board.

**Broadwater County calculated all the rollback taxes that were due for a 3-year period (1977-79) and sent the bills to owners in 1979.

***1978 and 1979 rollbacks are lumped together.

****Each subdivision was counted as a single parcel.

IV. "GREENBELT" LAWS IN OTHER STATES*

History

Forty-nine of the 50 states provide some type of property tax incentive for preserving agricultural land.[8] These states' programs range from a lower property tax classification for agricultural land or a preferential method of assessment with no penalties for change in use to complex contracts between the farmer and the local government or state in return for lower tax rates.

These property tax incentives were enacted during the past twenty years. As Table V shows, Maryland was the first state to do so (1957) and Louisiana the latest (1978). Most states, particularly in the West, passed their version of a "greenbelt" law by the early 1970's, as did Montana. However, like Montana, most states had assessed agricultural land at a lower rate than other types of property for decades.[9] The enactment of the states' "greenbelt" law often merely recognized in statute the existing practice.

The reasons for the enactment of statutes providing property tax incentives for agricultural land vary, of course, from state to state but commonly cited reasons were:

1) the sharp rise in the price of agricultural land during the past 25 years. Since 1950, the price of farmland nationwide has increased at more than twice the rate of the increase in the consumer price index. Nationally, the percent of farm income paid to property taxes doubled during the same period.[10]

2) desire to preserve the family farm. Several states - Texas, Kentucky, North Carolina - limited their "greenbelt" programs to natural persons, forbidding preferential assessment of farmland owned by corporations.

3) the rapid growth in urban and suburban development during the past two decades and the resulting loss of agricultural land near these areas. In the period 1967-1975 alone, 30.5 million acres of cropland were taken out of production in the nation, 60% of which was placed in "urban uses".[11]

4) better property tax administration, which a) lessened administrators' discretion to assess agricultural land on a different basis than other property without statutory authority, and b) equalized the tax burden between classes of property and, thus, often threatened to raise the tax on agricultural land.[12]

Types of "greenbelt" programs in the states

Greenbelt legislation is usually placed in one of three categories:

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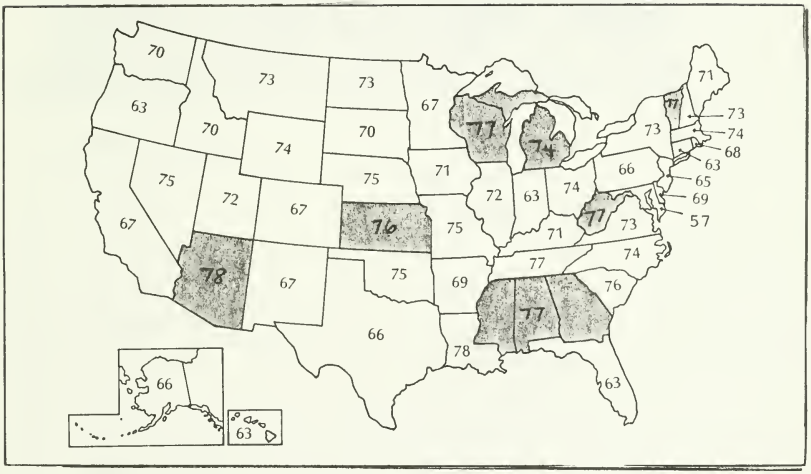
*Throughout this report, the term "greenbelt" refers to any tax incentive program designed to preserve agricultural land.

TABLE V

ENACTMENT OF "GREENBELT" LAWS IN
OTHER STATES

The figures in each state refer to the year in which the state enacted some type of property tax incentive for agricultural land.



SOURCE: Gloudemen, Use-value assessments (1979)

1) pure preferential assessment. In 17 states, statutes provide that a) agricultural land shall be valued according to its current use and not according to its market value for other uses, and b) no penalty is levied if the land is converted to a use other than agricultural.

2) deferred taxation. In 27 states, agricultural land is a) assessed at its current use, not its market value, and b) subject to a penalty if the land is changed to an ineligible use. In general, the penalty is the difference between the tax that was paid on the land and the tax that would have been paid on the land had it been assessed on its market value, multiplied by a certain number of years. This is called a rollback tax.

3) restrictive agreements. In six states, the landowner must sign an agreement with the state or local government in order to receive preferential assessment of his agricultural land. These agreements usually require the landowner to agree to keep his land in agricultural production for 5-20 years and impose a penalty for breaking the contract.

TABLE VI

TYPES OF "GREENBELT" LAWS IN OTHER STATES

PURE PREFERENTIAL ASSESSMENT

Arizona
Arkansas
Colorado
Delaware
Florida
Idaho
Indiana
Iowa
Louisiana
Missouri
New Mexico
North Dakota
Oklahoma
South Dakota
West Virginia
Wyoming

LOWER TAX RATE

Georgia

DEFERRED TAXATION

Alabama
Alaska
Connecticut
Illinois
Kansas
Kentucky
Maine
Maryland
Massachusetts
Minnesota
Montana
Nebraska
Nevada
New Jersey
New York
North Carolina
Ohio
Oregon
Pennsylvania*
Rhode Island
South Carolina
Tennessee
Texas
Utah
Vermont
Virginia
Washington

*Pennsylvania has two programs.

RESTRICTIVE AGREEMENTS

California

Hawaii

Michigan (also has "circuit-breaker" income tax credit)

New Hampshire

Pennsylvania*

Wisconsin (also has "cicuit-breaker" income tax credit)

NO PROGRAM

Mississippi

*Pennsylvania has two programs.

A variant of restrictive agreements is the "circuit-breaker" concept. In Michigan, owners of agricultural land can sign a contract with the state agreeing to keep their land in agricultural use for at least 10 years. The land is still assessed on its market value but property taxes in excess of 7% of the applicant's personal income can be claimed as a credit against state income tax return. Credits in excess of tax liability are refunded to the farmer. Wisconsin has a similar program, but the program is only available to those having an income of less than $7,500 and whose farm is 120 acres or less.[13]

Eligibility criteria

All forty-nine states have established criteria that agricultural land must meet in order to be assessed and taxed as agricultural. The chief purpose of these criteria is to distinguish "bona fide" farmers from "hobby farmers" or speculators. In some states legislators also sought to achieve other purposes through the eligibility criteria:

-- control where agricultural land could be so assessed and taxed to encourage orderly urban and suburban development; and

-- encourage family farms and discourage corporate farms.

The following summary shows the range of eligibility criteria in the states.[14]

1) Definition of agricultural land

Most states define agricultural land so broadly that land used for any agricultural activity - including the raising of bees, mink, or trout and the growing of flowers or ornamental trees - is included. However, states attempt to distinguish between bona fide farmers and speculators or developers through the following tests.

a) Previous agricultural use. Approximately half the states require that the land must have a history of agricultural use. Montana statute requires only that it was in agricultural production during the last growing season, but most states require 2-3 years past use. New York has the longest period for eligibility: eight years if the land is not in an agricultural district.

b) Acreage limitations. Seventeen states require that a parcel of agricultural land contain a certain number of acres in order to be eligible for preferential assessments. Six states (including Montana) set the minimum at 5 acres, nine require at least 10 acres, one (Washington) requires 20 acres, and one (Tennessee) 25 acres. Montana and several other states will, however, waive the acreage requirement if a smaller parcel produces a specified gross income.

No state uses a rebuttable presumption that land of less than a certain acreage is not agricultural.

c) Income limitations. Eighteen states require that agricultural land produce a minimum gross income to be eligible. Ten states require that the land produce a certain amount of revenue for the entire parcel, which ranges from $500 in Delaware to $10,000 in New York. Most other states vary the required income depending on the number of acres. Massachusetts, for example, requires production of $500 gross income for the first five acres plus $5 per acre for each acre thereafter. Five states require that the applicant derive a certain percentage of his income from the land. Alaska reduced its original 25% requirement to 10%, but Texas' 50% requirement has been reaffirmed by both the legislature and courts. Minnesota imposes a 1/3 requirement, Montana 15%, and Utah a minimum gross income of $1,000 if the owner derives 80% of his income from the land in question. One state - Virginia - requires that the land have produced 50% of the average state output per acre in its land classification before it is eligible for preferential assessment.

The income limitation is waived in most states if the land meets the minimum acreage limitation.

d) Ownership limitations. Several states attempt to limit the tax incentive to family farms. Kentucky and South Carolina statutes provide that land owned by corporations other than family farms is not eligible for preferential assessment. Texas limits the incentive to land owned by natural persons only.

Minnesota and North Carolina's requirements are more stringent: in Minnesota, the applicant must farm the land himself and he or his family must have owned the land for the past seven years; in North Carolina the land must be the applicant's residence and have been owned by him or his family for the past four years.

e) Zoning or planning limitations. In at least five states, the land must be in an area zoned agricultural or in an agricultural district before it can be eligible for preferential assessment. This requirement is intended to aid orderly development by allowing zoning boards to determine which land is suitable for urban development and which for cropland.

Nevada has an interesting related provision. Applicants must prove that the land has a higher value for some use other than agriculture before it is eligible for preferential assessment. This prevents land that is not under pressure to be developed from receiving the tax break.

2) Application for the tax incentive

All but ten of the states require that the landowner apply for preferential assessment for his agricultural land. Twelve states require initial applications only, six require annual applications,

one state (Louisiana) mandates reapplication every four years, and one state (North Carolina) provides for reapplication every eight years. In several of these states, the applicant must pay a processing fee.

The application is intended, in these states, to a) aid the assessor in determining whether the applicant's land meets the statutory criteria; b) limit the preferential assessment to only those who apply; and c) often, to acquaint applicants with the tax penalties for changing the use of the land.

In the remaining ten states, owners of agricultural land automatically receive the property tax incentive. The assessor assesses all land that he considers eligible as agricultural land. Citizens can appeal if their land is otherwise classed and prove they meet the statutory criteria. In eight of these states - Colorado, Idaho, Indiana, Iowa, North Dakota, Oklahoma, South Dakota, and Wyoming - there is no tax penalty for change in use of the land. Montana and Maryland are the only states that do not require application but do impose a rollback penalty.

3) Contracts for preferential assessment

Under the Williamson Act of California, to be eligible for preferential assessment applicants must first form an agricultural preserve of at least 100 acres (in most cases) and then sign an agreement with the local government to keep the land in agriculture for at least 10 years. This contract is binding on succeeding owners during the period. The landowner must give 60 days notice if he does not plan to renew the contract. He may cancel the contract during the 10-year period only if the local government finds that such cancellation is in the public interest and consistent with the intent of the statute. In Hawaii, applicants must agree to keep their land in agriculture for 10-20 years in order to receive preferential assessment. If a farmer signs the 20-year contract, his property is assessed at one-half the productive capacity valuation. The penalty for breaking the agreement is all the taxes not paid as a result of the preferential assessment plus a 10% penalty. In Wisconsin, an applicant must agree to keep his land in agriculture for at least 10 years before he is eligible for "circuit-breaker" income tax credits. The penalty for breaking this contract is repayment of all the tax credits received for the past 10 years, plus 6% interest. The state may also sue the landowner for damages if he changed the use of the land without first informing the state.

V. MEASURING THE MAGNITUDE OF GREENBELT PROPERTY TAX INCENTIVES

Lack of records

It is impossible to determine precisely the amount of tax relief farmers receive through "greenbelt" programs in most states because:

1) assessors do not keep records showing both the market value assessment and the productive capacity assessment. While twenty states originally required that such records be kept, several have repealed this requirement because it increased assessors' work.[15] In those states in which records have

been kept, farmers' tax savings due to preferential assessment have been significant:

State	Decrease in Assessed Value Caused By Preferential Assessment
Oregon	50% (1972)
Washington	55% (1974)
Connecticut	66% (1972)[16]

2) Agricultural land has been assessed on a different basis for decades, so that the tax saving or tax shift caused by the enactment of a greenbelt law is usually difficult to detect.

Increase in recent years

In states like Montana, in which agricultural land values are not recalculated on a regular basis, the gap between market value and assessed value is growing as the market value of agricultural land soars.

At the November meeting, I will present information on agricultural land reappraisal programs operating in other states.

Problems caused by lack of data

Some analysts note that this lack of data makes it impossible to determine:

1) if the preferential assessment is sufficient to offset market pressures for land;

2) whether the rollback period is long enough to offset these market pressures; and

3) the tax shift caused by the program.[17]

However, empirical data (see pages 22-26) has provided information on the first two points.

VI. PENALTIES FOR CHANGE IN USE

States imposing penalties

In seventeen states there is no penalty for changing the use of agricultural land that has received preferential assessment. It would seem that in these states the legislatures had made a policy decision that agricultural land should be assessed or taxed at a lower rate than other property. In Montana, similar tax breaks are given to rural cooperatives and new industry. Interestingly, none of the states surrounding Montana - Wyoming, North Dakota, Idaho, or South Dakota - impose a rollback tax.

In the remaining 31 states, however, the state assesses a penalty for change in the use of the land. The theory of tax penalties is generally to:

1) recapture some of the tax revenue lost as a result of the preferential assessment program;

2) capture a percentage of the capital gains derived from the sale of the land;

3) give local governments these recaptured taxes when their costs will probably rise due to urban growth; and

4) discourage conversion of the land to nonagricultural uses.[18]

Determining when change in use has occurred

What constitutes change in use is generally not defined in the state statutes, so other states may be experiencing the problems Montana has in determining when agricultural land ceases to be agricultural and making the developer of the land,not the buyer, pay the tax. However, several states have mechanisms for helping to achieve these goals:[19]

1) annual applications. Six states require applicants to reapply annually for preferential assessment and provide information that their land meets the statutory criteria.

2) notice from zoning or planning boards. In New Jersey, the local planning board informs the assessor when it gives preliminary approval of a subdivision plan for agricultural land. In Maryland and Florida, recording of a subdivision plat constitutes change in use.

3) notice on title. In New Jersey, tax collectors are required when doing title searches to stamp "may be subject to rollback taxes" on the titles of all preferentially assessed agricultural land.

4) imposition of tax on owner, not land. Connecticut imposes a conveyance tax (of 1%-10% of the sales price, depending on the number of years the property was preferentially assessed) rather than a rollback tax when a change in use occurs. This tax is a personal debt of the seller and is not a lien on the land as rollback taxes are.

5) presumption of change in use. Florida statutes allow assessors to make a presumption that the change in use has occurred if the land sells for three times its agricultural value.

Period of rollback

In twenty-six of these states, the tax penalty imposed for change in use is a rollback tax. The rollback is calculated in these states in the same manner as Montana's. However, the period of the rollback varies in these states:

No. of States	Period of Rollback
4	current year plus 2 previous years
5	current year plus 3 previous years
4 (including Mt.)	current year plus 4 previous years
6	current year plus 5 previous years
4	current year plus 7 previous years
2	current year plus 10 previous years
1 (Hawaii in certain cases)	current year plus 20 previous years

In addition, eleven states charge interest on the taxes deferred as a means of discouraging speculators from using the preferential assessment program as a cheap way of holding land until development. The interest rates vary from 5% to 10%.

Six states also impose an additional penalty if landowners fail to notify assessors of a change in land use. This penalty is 10% of the rollback tax otherwise due in North Carolina, 20% in Nevada, Oregon, and Washington, 100% in Utah, and 5 times the current difference in taxes between the market value and productive capacity of the land in Louisiana.

Other deferred tax penalties

Five states impose tax penalties other than rollback taxes as sanctions for change in use:

1) In California, a landowner who cancels his land use agreement with the local government must pay a penalty equal to 12.5% of the current market value of the property.

2) New Hampshire imposes a "land use change tax" of 10% of the property's market value.

3) Maryland's "deferred tax penalty" is twice the difference between the tax due on the market value of the land and the use value.

4) Oregon uses the same base - difference between the two assessments - but multiplies this penalty by up to 10 times, depending on how long the property has been zoned for farm use.

5) Connecticut's conveyance tax is from 1% - 10% of the sales price of the land, depending on how long it has been preferentially assessed.

Massachusetts has an interesting provision that some landowners may consider a penalty. Its statutes require a landowner who plans to sell his agricultural land or convert it to an ineligible use to notify the local government. The local government has a 60-day option to meet the price offered for the land or the market value of the intended conversion and purchase the land itself.

Further, property tax savings are slight compared to potential capital gains that can be realized by sale of the land for development, as Tables VII and VIII suggest.

The CEQ concluded that the tax break is "...likely to make a difference in the rate of conversion to urban use primarily for land that is in the hands of relatively young owners who are either:

1) farmers who want to continue to farm, and are in a location where farming is not impeded by urban neighbors, or

2) people who want to maintain a country home.

For these people, the tax saving may be large enough to play a significant role in their decision to sell."[24]

However, the tax savings is too small to offset potential capital gains if the farmer wishes to sell his land.

2) Preferential assessment with deferred taxation

b) rollback taxes are also too small to act as an effective deterrent to conversion. Table VII demonstrates this gap by showing what percentage of market value the rollback tax is, depending on several variables. As an example, assume that land in Montana is appreciating at 5% a year, that the tax rate is 100 mills, and that farm land is assessed at 50% of market value [all conservative estimates]. In this example, the rollback tax equals only 2.59% of the sale price of the land.

c) increasing the period or amount of rollback tax may, however, have unexpected repercussions. If rollback penalties were made high enough to act as an effective deterrent, farmers might be reluctant to enroll in a preferential assessment program. Moreover, since the rollback tax is, by its nature, least on prime agricultural land (for which the gap between productive capacity and market value is lowest) and highest on marginal land (for which the assessment gap is largest), an increased rollback tax could encourage the conversion of the best agricultural land.

d) preferential assessment programs, even when coupled with rollback provisions, have been characterized as "interest-free loans to developers" or "a free ride for the speculator" because they allow him to avoid or defer taxes on land he is holding for speculative purposes. Rollback taxes can be totally avoided (in Montana, at least) and paid by the purchaser or at least paid at the time when the developer receives his profit from selling the land. Even when interest penalties are added to the rollback tax, developers benefit from these tax provisions so long as the interest rates are less than those charged by commercial lending institutions.[25]

VII. HOW EFFECTIVE ARE GREENBELT LAWS?*

Analysts of greenbelt laws usually isolate two chief purposes of "greenbelt" laws: 1) allowing tax relief to farmers, and 2) slowing or halting the conversion of agricultural land to other uses.

Greenbelt laws have generally been held to be effective in achieving the first goal. As previously noted, preferential assessment can lower farmers' property tax bills by 50%-60%, a significant factor at a time when property taxes may consume 7%-10% of farmers' personal income.[20] By lowering a farmer's tax bill, greenbelt laws can help him defer development until he or his heirs choose it. Thus, preferential assessment can slow the conversion of agricultural land and give farmers breathing space.

However, preferential assessment and deferred taxation programs have been found to be only marginally effective in stopping the conversion of agricultural land to nonagricultural use by virtually every study on the subject for the past five years. The following quotes from some of the leading studies illustrate their reservations:

> How successful is use-value farmland assessments in preserving agricultural lands in farm use? The answer in a nutshell is, "only slightly".[21]
>
> With respect to the goal of retarding the conversion of farm and other open space land, differential assessment is marginally effective and its cost in terms of tax expenditures is high, in most cases so high as to render it an undesirable tool for achieving this goal.[22]
>
> Preferential assessment and deferred taxation have little impact on land use, because the penalty is so slight in comparison to the gain from conversion to more intensive use of the land.[23]

Specifically, these studies have found these programs share the following problems:

1) Pure preferential assessment

   a) property tax incentives are insufficient to prevent conversion of agricultural land.

   In an exhaustive study in 1976, the federal Council on Environmental Quality (CEQ) concluded that property taxes were not a significant factor in most farmers' decisions to convert land. Life-cycle reasons - retirement, death, etc., - and high resale values ranked higher in farmers' decisions to sell land for development than their property tax burdens.

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*Due to time constraints, this analysis is necessarily brief and general and does not do justice to the careful studies of particular states' greenbelt laws that have proliferated in recent years. If the Committee would find further detail useful, I will be happy to provide it.

TABLE VII

POTENTIAL TAX OBLIGATION AS PERCENT OF MARKET VALUE OF LAND, ASSUMING NO INTEREST CHARGE

Land Value Appreciation Rate	Period of roll back	Farm Value = 80% Market Value at Start		Farm Value = 50% Market Value at Start		Farm Value = 30% Market Value at Start	
		Tax rate of:		Tax rate of:		Tax rate of:	
		1%	3%	1%	3%	1%	3%
2%	3	.66	1.98	1.51	4.53	2.07	6.21
	5	1.18	3.54	2.54	7.62	3.44	10.32
	7	1.74	5.22	3.57	10.71	4.79	14.37
	10	2.63	7.89	5.09	15.27	6.73	20.19
5%	3	.79	2.37	1.58	4.74	2.02	6.06
	5	1.41	4.23	2.59	7.77	3.29	9.87
	7	2.13	6.39	3.63	10.89	4.55	13.65
	10	3.38	10.14	5.03	15.09	6.20	18.60
10%	3	.90	2.70	1.58	7.74	2.03	6.09
	5	1.68	5.04	2.61	7.83	3.23	9.69
	7	2.47	7.41	3.55	10.65	4.27	12.81
	10	3.67	11.01	4.83	14.49	5.56	16.68
15%	3	1.05	3.15	1.65	4.95	1.97	5.91
	5	1.89	5.67	2.64	7.92	3.09	9.27
	7	2.67	8.01	3.46	10.38	3.99	11.97
	10	3.82	11.46	4.54	13.92	5.03	15.09

SOURCE: Untaxing Open Space, p.70

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TABLE VIII

ROLLBACK AS PERCENT OF TOTAL LAND VALUE
(Farm Value = 50% of Market Value at Year 0)

Appreciation Rate	Period of roll back	Interest @ 2% Taxes 1%	Interest @ 2% Taxes 3%	Interest @ 5% Taxes 1%	Interest @ 5% Taxes 3%	Interest @ 10% Taxes 1%	Interest @ 10% Taxes 3%	Interest @ 15% Taxes 1%	Interest @ 15% Taxes 3%
2%	3	1.6	4.7	1.6	4.8	1.7	5.0	1.7	5.2
	5	2.6	7.9	2.8	8.4	3.0	9.1	3.3	9.8
	7	3.7	11.2	4.0	12.1	4.5	13.5	5.0	15.0
	10	5.5	16.5	6.1	18.4	7.2	21.5	8.2	24.7
5%	3	1.6	4.8	1.6	4.9	1.7	5.1	1.8	5.4
	5	2.7	8.0	2.8	8.4	3.0	9.0	3.2	9.7
	7	3.8	11.3	4.1	12.2	4.5	13.6	5.0	15.0
	10	5.4	16.3	6.0	18.0	7.0	20.9	7.9	23.8
10%	3	1.6	4.9	1.7	5.0	1.8	5.3	1.8	5.5
	5	2.7	8.1	2.8	8.5	3.0	9.1	3.5	10.4
	7	3.7	11.1	3.9	11.8	4.3	12.9	4.7	14.0
	10	5.2	15.5	5.7	16.9	6.5	19.4	7.3	21.9
15%	3	1.7	5.0	1.5	5.1	1.8	5.5	1.8	5.5
	5	2.7	8.1	2.8	8.5	2.9	8.7	3.2	9.7
	7	3.6	10.9	3.9	11.6	4.2	12.7	4.3	12.8
	10	4.8	14.5	5.3	15.8	6.0	17.8	6.7	20.0

SOURCE; Untaxing Open Space, p.72

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Table VIII shows what percentage of the market value the rollback tax and interest constitute at various land appreciation rates and periods of rollback.

3) Restrictive agreements

e) preferential assessment programs backed up by strict restrictive agreements or penalties have not lived up to their authors' hopes, largely because only those landowners who would not, in any case, have developed their land for the contract period have participated. Restrictive agreements have also worked a hardship on families whose circumstances changed rapidly and who were forced to maintain the contract. While this has been true of California's experience, Wisconsin and Michigan's recent programs backed by circuit breaker provisions may be more successful.[26]

VIII. SUGGESTIONS FOR IMPROVING OR ALTERNATIVES TO STATES' CURRENT GREENBELT LAWS

Critics of current greenbelt laws have suggested various suggestions for improving these laws or alternative methods for preserving agricultural land. Some of these are sketched in the groups below.[27]

A. If the intent of the law is to provide farmers with tax relief:

-- repeal tax penalties

-- avoid contracts or restrictive agreements so the maximum number can and will participate

B. If the intent of the law is to 1) significantly slow or stop the conversion of agricultural land, and 2) recapture some of the taxes lost through preferential assessment:

1. Improving existing greenbelt laws

a) Make stricter eligibility standards such as:

-- requiring a larger number of acres

-- requiring that the land be in an area zoned agricultural or the local planning board approve the classification of the land as agricultural

-- requiring landowners to apply annually for preferential assessment

b) Define "change in use" more explicitly and provide mechanisms for alerting assessors to these changes so that the penalty is applied against the person who develops the land, not the purchaser, by:

-- redefining "change in use" to include the filing of a subdivision plat, sale of land for more than three times the assessed value, etc.

-- requiring local authorities to inform the assessor when preliminary approval is given for a subdivision or zoning change of variance

-- requiring payment of the rollback tax before the subdivision plat or certificate of survey can be filed or building permits issued

-- require that liability for rollback taxes be stamped on the title of all land that receives preferential assessment

c) Change deferred tax penalties by:

i) making the penalty a personal debt of the seller, not a lien on the land

ii) charging a substantial fee for filing a subdivision plat, in lieu of the rollback tax[28]

d) Make preferential assessment part of a comprehensive land use program in which planning authorities determine what land should be used for agriculture.

2. Substituting other alternatives

a) Use a circuit breaker concept to:

i) keep the ad valorem tax base intact so that local governments don't suffer;

ii) target income tax credit to those farmers that need them; and

iii) spread the cost of preserving agricultural land among all taxpayers of the state.

b) Establish systems such as transfer of development rights, land banking, or agricultural districts. The enclosed 1976 Legislative Council study, Preservation of Agricultural Land: Alternative Approaches, describes these systems in more detail.

This quick sketch of possible suggestions or alternatives is offered only for Committee discussion, without any analysis of pros and cons. In later reports, I will explore in greater detail any possibility in which Committee members express interest.

NOTES

1. Chapter 191, Laws of 1957.

2. "Montana's Greenbelt Law", Research Memorandum to Revenue Oversight Committee, 22 August 1979, p. 11.

3. Passed 69-32 on third reading.

4. Minutes, Senate Taxation Committee, 8 March 1973.

5. Ibid., 10 March 1973.

6. Minutes of House Taxation Committee, 17 March 1973.

7. SB 72 passed second reading in the House on March 19. The conference committee on HB 15 also met on that day. The House passed SB 72 on third reading and adopted the conference committee report on HB 15 on March 20. The Senate adopted the conference committee report on HB 15 on the 21st. House and Senate Journals for those days.

8. Joe Belden, A Survey of State Programs to Preserve Farmland (Council on Environmental Quality: 1979).

9. Robert Gloudemans, "Evaluating Alternative Use-Value Farmland Assessment Laws" in American Society of Appraisers, monograph No. 8 (January 1979) p. 12. In 1971, Bureau of Census data showed that the national aggregate assessment-sales ratio for "acreage" was less than 67% of the assessment-sales ratio for other types of property. 1972 Census of Governments, vol. 2, pt. 2, p. 34.

10. Gloudemans, p. 11.

11. Jon Clark, Conserving the Nation's Farmland (Northeast-Midwest Institute: 1979), pp. 1-5.

12. Gloudemans, pp. 11-12.

13. MICH. COMP. LAWS, Sec. 554.701-554.719. WISC. STAT. ANN. Sec. 71.09(11).

14. These summaries are drawn from Gloudemans, pp. 12-19; Belden, passim.; and the various states' statutes.

15. Gloudemans, p. 18. Council on Environmental Quality, Untaxing Open Space (April 1976), pp. 206, 213.

16. Ibid., pp. 214, 250, and 311-316.

17. Ibid., pp. 206, 213. Neal Roberts, "The Big Giveaway Called Differential Assessment" in Urban Law and Policy 2 (1979), pp. 65-79. Helen Ladd, "Tax Policy Considerations Underlying Preferential Tax Treatment of Open Space and Agricultural Land (Howard University: Urban Planning, Policy Analysis, and Administration, 1978).

18. Gloudemans, pp. 15-25. Glen Atkinson, "The Effectiveness of Differential Assessment of Agricultural and Open Space Land" in 61 American Journal of Economics and Sociology (April 1977), pp. 200-202.

19. These states' provisions are abstracted from Untaxing Open Space, and Gloudemans, passim.

20. U. S. Dept. of Agriculture, Economic Research Service, Farm Real Estate Taxes (1974).

21. Gloudemans, p. 20.

22. Untaxing Open Space, p. 22.

23. Atkinson, p. 203.

24. Untaxing Open Space, pp. 66-68.

25. Ibid., p. 71-76.

26. Untaxing, pp. 188-191, pp. 293-4.

27. These suggestions are, variously, advanced in Gloudemans, Clark, Untaxing, and the other studies cited in these notes.

28. Suggested by Helen Peterson, Chairman, State Tax Appeal Board.

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

October 27, 1980

TO: Members, Revenue Oversight Committee
FROM: Jim Oppedahl, Staff Researcher
RE: Revenue Department Comments -- Greenbelt

Jack Gribble, Administrator of the Property Assessment Division, Department of Revenue, distributed the enclosed comments on the Greenbelt draft bill to the Committee at the end of the last meeting. Committee members may want to review the comments -- which are summarized beginning on page three -- prior to the next meeting.

Please contact me at 449-3064 if I can be of any assistance.

STATE OF MONTANA
DEPARTMENT OF REVENUE
MITCHELL BUILDING
HELENA, MONTANA 59601

September 5, 1980

Mr. Jack Gribble, Administrator
Property Assessment Division
P.O. Box 5865
Helena, MT. 59601

RE: MACA Legislative Committee Recommendations of the Proposed Greenbelt Law Revision.

Dear Mr. Gribble:

At your request, the Legislative Committee of the Montana Appraisers and Classifiers Association has reviewed the proposed bill to revise the Greenbelt law (draft copy dated July 12, 1980). Our comments and critique of the bill are as follows:

General Comments

1) The intent of this form of legislation is admirable but its end effect has been an administrative nightmare for the local appraisers and assessors. The specification of the qualifications for agricultural land allows individuals the opportunity to create loopholes through which to defeat the purpose of the legislation. We recommend that there be no delineation of the qualifications for a bona fide agricultural operation. The county appraiser, via directions from the Department, should be the determining factor as to the lands agricultural qualification. This will once again place agricultural land back on the same level of appraisal judgement as all other land is held and place the burden of proof on the taxpayer.

2) The change in use of the property occurs with the filing of the subdivision plat or filing of the division of the property. It is the individual that files the plat or division that has determined the change in use and should be liable for any penalty. Currently, the use is said to have changed at a later point in time and typically the individual that purchases the property must pay the penalty rather than the subdivider. We recommend that the penalty be levied prior to the final approval of any subdivision of the land.

Specific Comments

Section 1 (1): All reference to the qualifications for agricultural land be omitted. The burden of proof on being a bona fide agricultural operation should rest with taxpayer. Allowable evidence might include copies of properly filed income tax statements.

Section 1 (4): All reference to parcel size should be eliminated. The 30 day classification requirement (line 19) of the land will force a hardship on our appraisal offices particularily in the larger counties. If needed, we recommend 60 days. It should be the county assessor, not the treasurer, to enter the classification sought in the assessment book.

Section 3 (a): The use changes with the filing of the land division not the time of use application.

(b) The county Clerk & Recorder should inform the subdivider of the reporting requirement at the time of filing.

Section 4: Is the Greenbelt Tax pro-rated for the assessment year?

Section 5: We question the tax as a personal debt as verse to a lien against the property.

On behalf of the committee, I would like to thank you for the opportunity, as it effects our lives and work, to review and critique this bill prior to it implementation.

Sincerely,

Robert Peckinpaugh
Legislative Committee Chairperson

RP:lc

The comments and suggestions received thus far regarding "Greenbelt Law" could seemingly be summarized to include the following:

1. It seems the largest issue addressed is one recommending a change on page 2, subsection b (i), b (ii); should allow scrutinization of farm income schedule for state and federal income tax by DOR to ascertain factually the claim for Agricultural Status through the gross income requirements listed.

2. The second idea addressed is that of defining the terms, bona fide agriculture and bona fide silviculture with respect to subsection b(iii) and (iv). In conjunction, there is a question raised that in the event a small acreage tract regardless of size is leased by a "bona fide agriculturalist", it would qualify for agricultural status without regard to gross income criteria. Suggestion: That this either be clarified or stricken from proposal.

3. The next suggestion revolves around question of when the use change actually occurs. Suggestion: Use change is created and occurs with the filing of Cert. of Survey (subdivision plat). Therefore, any penalty tax due would affect the developer rather than the prospective small tract purchaser as is the present reality. This would suggest clarification of the term owner at time of use change as appears in New Section 2, subsection (1) and New Section 4, subsection (1). Is this owner of record, purchaser, or seller?

4. Clarification of "greenbelt tax", New Section 2, subsection (2). Is it equal to the land's taxable value for the newly determined use, and for how long is it due?

5. The time of action on applications as stated in Section 4, pg. 3, states the DOR must act on every application for agricultural classification within 30 days of receipt. Concern has been expressed that (1) must applications would be filed the last week before deadline, (2) there would only be 20 working days to complete review of every application. Suggestion: A 60 day period at least should be allowed for the review of all applications for determining eligibility for agricultural assessment of small parcels from the date of application.

6. Suggested that Clerk and Recorder be required to inform anyone who files a subdivision plat, that a notice to the DOR is required. The $100 penalty without this notification (Assessor) would most likely create problems. This applies to New Section 3.

7. There was concern expressed on acreage requirements for determining basic eligibility, ranging from 5 acres to 40 acres. This is of particular concern if the income criteria is not strengthened. Again this is dependent upon defining the term "bona fide".

Summary of Greenbelt Comments (Cont'd)

8. The actual sale of agricultural products as creating the gross income should be specified.

9. Questions have been brought up concerning the $1500 and 15% Gross Income figures. Are they adequate and at a current level? Where did they come from to begin with? Maybe a figure of 50% or higher could be considered.

10. Suggestion: A timber harvest or management plan as a criteria for qualifying timbered acreages.

11. Suggestion: Section 4 (a) page 4 first line should be read County Assessor not Treasurer?

12. MACA Comments and suggestions are attached in addition to all other comments received.

ADDENDUM

1. Should the taxpayer be required to file application for Greenbelt status annually, with the DOR, therefore, having authority to check income tax returns on an annual basis? If so, administrative problems in dealing with the number of applications received annually may develop with the time needed to deal individually with each application.

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE GREENBELT LAW BY REQUIRING APPLICATION FOR AGRICULTURAL ASSESSMENT OF PARCELS LESS THAN 20 ACRES; REPEALING THE ROLLBACK TAX; IMPOSING A GREENBELT TAX ON THE OWNER OF LAND WHOSE USE HAS CHANGED; AND PROVIDING FOR THE ADMINISTRATION OF THE TAX; AMENDING SECTIONS 15-7-202, 15-7-207, 15-7-211, AND 76-3-301, MCA; AND REPEALING SECTIONS 15-7-204, 15-7-205, 15-7-209, AND 15-7-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) Land which is actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year it meets any of the following qualifications:

(a) the area of such land is ~~not less than 5~~ 20 or more contiguous acres when measured in accordance with provisions of 15-7-206; ~~and it has been actively devoted to agriculture during the last growing season and it continues to be actively devoted to agricultural use, which means:~~

~~(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or~~

~~(ii) it is used for grazing; or~~

~~(iii) it is used for growing timber; or~~

~~(iv) it is in a cropland retirement program; or~~

~~(b) it agriculturally produces for sale or for home consumption the equivalent of 15% or more of the owner's annual gross regardless of the number of contiguous acres in the owner's~~

~~(c) it is used to raise in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms; or~~

(b) regardless of the number of contiguous acres in the ownership, the owner can demonstrate that the land:

(i) agriculturally produces $1,500 or more annual gross income; or

(ii) agriculturally produces 15% or more of his annual gross income; or

(iii) is leased to a bona fide agriculturalist; or

(iv) is in a bona fide silva culture status.

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals

kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(4) (a) In order for a parcel of land containing less than 20 acres which is not farmed in connection and conjunction with a larger parcel to be assessed as agricultural land for any taxable year, the owner must apply by April 30 of that taxable year to the county appraiser for agricultural assessment on a form prescribed by the department of revenue. Owners of contiguous parcels which are not farmed by the same owner in connection and conjunction with a larger parcel must make a separate application for each parcel that contains less than 20 acres. The department shall classify a parcel as agricultural within 30 days of receipt of the application if the parcel meets the qualifications established in subsection (1). If the department fails to act upon a timely application within the prescribed deadline, the taxpayer's application is considered to be granted on the day following the last day of the deadline. The county treasurer shall enter the classification sought in the application in the assessment book.

(b) Wherever a division of land that has been assessed as agricultural land occurs as defined in 76-3-103, the department shall reassess each parcel that is less than 20

acres as nonagricultural land unless the owner of the parcel has made application as provided in this subsection (4)."

NEW SECTION. Section 2. Greenbelt tax for change in use. (1) When land that is assessed as agricultural land is applied to a use other than agricultural, the person who owns the land at the time the change in use occurs is subject to a tax. This tax is called a "greenbelt tax".

(2) The greenbelt tax is equal to the land's taxable value as nonagricultural land.

NEW SECTION. Section 3. Report required -- penalty for failure to file. (1) The owner of land that is assessed as agricultural land shall file a report with the county assessor on a form prescribed by the department of revenue within 30 days after:

(a) the land is applied to a use other than agricultural and does not meet the qualifications listed in subsection (1) of 15-7-202; or

(b) a division of land as defined in 76-3-103 has occurred and any of the parcels into which it has been divided are less than 20 acres in size.

(2) The department shall impose a penalty of $100 if an owner fails to file the report required by subsection (1) within the prescribed time period.

NEW SECTION. Section 4. Imposition of greenbelt tax -- interest on delinquent tax -- collection. (1) If, upon

reviewing the report required in [section 3], the department determines that the use of the land has been changed to a use other than agricultural, it shall within 30 days after receiving the report reclassify and assess the land as nonagricultural, calculate the greenbelt tax due, and send notice of imposition of this tax to the owner of the land at the time its use was changed.

(2) Unless appealed as provided in 15-2-101, et seq., or 15-15-101, et seq., a person receiving such notice must pay the greenbelt tax due to the treasurer of the county in which the land is located within 30 days after receiving notice from the department.

(3) The person becomes liable for interest on the balance of any greenbelt tax not paid when due at the same rate as interest on delinquent property taxes.

(4) The county treasurer shall proceed to collect delinquent payments of the tax imposed under this section or the penalty imposed under [section 3] and any interest due thereon according to the procedure established in 15-30-311. The funds so collected shall be paid to the county treasurer to the credit of the general fund.

NEW SECTION. Section 5. Taxes as personal debts -- disposition of taxes and interest. (1) The greenbelt tax, all interest accruing on its unpaid balance, and the penalty provided for in [section 3] are personal debts of the person

who is the owner of the land at the time the land use is changed and are not liens that attach to the land.

(2) Any penalty or tax imposed under [section 3 or 4] and any interest thereon shall be paid into the county treasury and allocated to the various taxing units in which the land is located in the same manner as other property taxes.

Section 6. Section 15-7-207, MCA, is amended to read:

"15-7-207. Continuance of valuation as agricultural land. Continuance of valuation, assessment, and taxation under this part shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this part and not upon continuance in the same owner of title to the land. ~~Liability--to~~ Except as provided in 15-7-202, liability for the ~~rollback--tax~~ greenbelt tax provided for in [section 2] shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use under the conditions prescribed in this part."

Section 7. Section 15-7-211, MCA, is amended to read:

"15-7-211. Agricultural land ~~taken--under~~ affected by eminent domain. ~~The--taking--of--land--which--is--being~~ Land valued, assessed, and taxed ~~under--this--part~~ as agricultural land which is subsequently affected by the right of eminent

domain shall not subject the owner of the land so taken affected to the rollback-tax herein-imposed greenbelt tax provided for in [section 2]."

Section 8. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify:

(a) the governing body or its designated agent of any land division described in 76-3-207(1); and

(b) the county assessor of any division of land, as defined in 76-3-103(3).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing."

Section 9. Repealer. Sections 15-7-204, 15-7-205, 15-7-209, and 15-7-210, MCA, are repealed.

Section 10. Codification. It is intended that sections

2 through 5 be codified as an integral part of Title 15, chapter 7, part 2, and the provisions of Title 15, chapter 7, part 2, apply to sections 2 through 5.

-End-

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